

The TENANTS

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LAW:

William A. Currenz

TREATISE very Useful

16 FOR 662

TENANTS & FARMERS

Of all Kinds,

And all other persons whatsoever.

WHEREIN

The several natures, differences and kinds of Tenures and Tenants are discussed, and several Cases in the Law touching Leases, Rents, distresses, Replevins, and other accidents between Landlord and Tenant, and Tenant and Tenant between themselves and others.

ALSO,

The PARISH-LAW,

as to Poor, Apprentices, Bastardy, &c.

Fit for all persons to know.

By R. T. Gent.

London, Printed for Samuel Speed, at
the Rainbow in Fleetstreet. 1666

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To the Readers whe-
ther Landlords or
Tenants; and all
People in *Eng-
land.*

I Have often observed many
*inconveniences and dama-
ges to happen to Tenants often-
times by their Ignorance and
Timorosity, not knowing how
to defend themselves against
insulting and cruel Land-
lords; and oftentimes they
commit many delinquencies to
the Landlord, and trespasses*

To the Reader.

and Nufances against one another unwittingly, not knowing when they offend; and most often they plunge themselves into the Mire, and are insnared in the Net of trouble, like a Bird, by their overmuch striving to get themselves free and at liberty from it, and insnare themselves more and more, and work themselves the farther and faster in, till they beat themselves out of breath, and break their wings, and loose so many feathers, that they scarce ever get flush again. One cause hereof is: many delight to delude and flatter themselves, by setting a fairer gloss upon their cause then it will bear when it comes to the

To the Reader.

the Test, and to give wrong instructions to their Clerk or Attorney, whereby it cannot be rightly Stated to learned Counsel; and then what the Event of this will be, I leave to your selves to Judge.

Another cause of many vexations Suits whereby many are Ruined, is (together with the Spirit of Malice and Revenge, wherewith too many are possessed) a Pestilential Moth, which devours whole Houses, and a Caterpillar that consumes whole Farms; this vermine is bred of a broken Trades-man in the City, or of a troublesome vexations Countryman, who hath by unjust Suits Ruined himself by

To the Reader.

*endeavouring to Ruine others,
and now thinks himself an
able Lawyer. As one that
hath travailed to the East-Ind-
ies may fancy himself to be
an expert Merchant ; or one
that hath methodically passed
through the Torrid cure of
the Pox, immediately turns
Doctor, and writes himself
approved Physitian, which he
hath attained to through great
care and pains ; so this Petti-
fogger, entitling himself Sol-
licitor, and being well gradua-
ted in the faculties of Igno-
rance, Impudence and Ly-
ing, he makes a great many
friends Foes, and puts them
to much vexation and expen-
ces, by stirring them up to un-
neces-*

To the Reader.

necessary Quarrels for trifles, or misleading them in those of greater consequence, and encouraging all, that they can never fail in their cause, because he can alwayes furnish them with Witnesses, which know their business better then themselves, whom he always keeps Incognito. I have thus charactered this creature, that you might know and avoid him; and I have taken the pains to compose this Treatise, to teach you to undeceive your selves, and not to seek refuge from the Law, in such cases when you your selves have done the injury: and likewise to shew you how you may ward your blows, and defend your selves

To the Reader.

selves against such as are injurious unto you, Malicious and Superbous; and have given you particular directions in such things as are daily accident in most Parishes. I wish you hereby much profit, which is all the design herein intended by

R. T.

The



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Tenants.



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Tenants Law.

CHAP. I.

*A division of the Several kinds of
Tenants and Tenures.*

EVery subject of this king-^{The kinds}
some that occupieth a-^{of Tenants}
ny Lands, or inhabiteth^{and Te-}
in any house or Tenement, is^{nures,}
said to be a Tenant, *Tenens à*
Tenendo; because he must hold
of some Lord or other.

And divers and various are
the natures and kinds of Te-
nants and Tenures in this Land
at this time; Although they
have been more numerous, and
indeed excessive slavery to the
people, so that their exorbitant

B Cruelty

Tenants Law.

Cruelty hath caused their dissolution.

Those which are ceased to be, **Villénage.** are Tenure in *villénage*, where the Lord might vassal and enslave his Tenants person at his pleasure, but not kill him.

Pillénage. *Pillénage*, where the Lord might pillage his Tenant of all his goods.

Free-Alms. Frank-Almoigne, or free Almes, was a Tenure begun and had its original, either at or soon after the foundation of *Monasteries & Religious houses*, and extirpated with them. The nature of it in old time was, when a man being Seized of Lands or Tenements in his *Demefne* as of Fee, of the same Land did enffeeffe some Abbot or Prior and their Covents, or some Dean and Chapter and their Successours, or some Parson of a Church and his successors, or any other Religious person.

Tenants Law.

3

son who was in a Capacity to take such Alms, to hold the same Lands and Tenements to them and their Successors in *Liberam Eleemosynam*, in Free-Alms, or *Frank-Almoigne*, of the grantor and his heires: and such as held in Free-Alms were bound in consideration of such grant or Feoffment, to perform certain Divine and Religious services and exercises, for the Souls good, life and Prosperity of the grantors and all others.

And they confirmed all their grants with grievous *Anathema's* and imprecations against all such as should in any wise diminish or take away such their grant, or convert the same unto any other use; (which some justly beleeve to be none of the least Causes why purchasers of Church-Lands find such ill Success, as seldome to enjoy it to the fourth generation.)

B 2

But

But, as I said before, this Tenure and the Religious houses ended together, or immediately one after the other; So that none can grant any Lands or Tenements in *Liberam Eleemosynam* at this day.

*Knight-Serv
vices*

Tenure in Capite and Knights Service is also by Act of Parliament in the twelfth year of his now Majesties Reign, (together with the Court of Wards which was dependent upon that Service,) taken away, and all those Tenures are now turned into common *Soccage*.

So that the more usuall Tenants amongst us at this day are

Fee-Simple

Tenant in Fee-Simple, in Fee-Taile.

Fee-Tail.

Tenant in Tayl, after possibility of issue extinct.

Dower,

Courtesie,

Term of life,

Tenant in Dower, by the courtesie of England; Tenant for Term of life, for years upon Lease,

Tenants Law.

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Lease, in writing, or Lease pa-
rol.

Tenant at will; by the com- at will.
mon Law, or by custome.

Tenant by Coppy of Court- cappy.
Roll.

Tenants in Coparcenery, Coparcene-
Joynt-Tenants, and Tenants in
common.

Fee-Simple.

A man that is seized in Lands Fee-Simple
or Tenements, to hold to him
and his heires for ever, is said to
be Tenant in Fee-Simple, and
such an Estate is called *Feodum*
Simplex. The word *Feodum* in
Latine being taken to signify In-
heritance; and *Simplex* implies
pure, plain, or unmixt: and in-
deed Fee-Simple is the most pure
holding that is, being unmixt
or entangled in it self. But as the
whitest Colour will be soonest
stained; So is this pure Te-
B. 3 nure

Tenants Law.

nure most subject to bee Spotted and involved in troubles above any other ; Which the Law calls *Incombrances*.

Incumbrances of Fee-Simple.

If a man were to deal as purchaser with a Tenant in Fee-simple, he hath a happy bargain if he meets with a Simple tenure and a Simple Tenant ; I mean, the one Free from Incombrances, and the other from deceit : which many have found it a difficult thing to obteyne.

I shall therefore by way of caution set down the several troubles and incombrances this pure and Simple tenure, called Fee-Simple, is subject unto.

Fee-Simple may be incumbered, with Several Judgements, Statutes Merchant and of the Staple, Recognizances, Mortgages, Wills, Pre-contracts, Bargaines and Sales, Feoffments, Fines, Amerciaments, Joyn-tures, Dowers, and many other
fraudu-

Tenants Law.

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fraudulent Conveyances, if a knave once possesse it; and last of all, may be quite forfeited for Treason.

But Fee-Simple being free from any of the aforementioned incombrances, is the most free, absolute, and ample Estate of Inheritance that any man can have; And therefore a Tenant in Fee-Simple, is said to bee *Seisitus in Dominico suo, ut de feodo*; That is, seized in his Demesne as of Fee.

Tenant in Fee-Taile.

All Free-hold inheritances before the Statute of Westminster 2. Cap. 1. were Fee-Simple at the common Law; So that Tenant in tayle was instituted by force of that Statute; By which statute there is a twofold Tenant in Tayle, viz.

Beq.

General

General
tail.

General, and Special Tayle.

He is said to be Tenant in general tayle, who holdeth Lands or Tenements to him and to the heires of his body begotten.

For if in this case he marry many wives, and have issue by them all; every one of them may (the Elder dying) come to inherit this Land, because every one is the issue ingendred of his body.

It is the same case if Lands or Tenements be invested upon a woman and the heires of her body, And shee have several husbands, and children by them all, every one of them is in a possibility to inherit those Tenements, being all begotten of her body.

But where lands or Tenements are seiled upon a man and his wife, and the heires of their bodyes between them two lawfully

Tenants Law.

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fully to be begotten; this is Tenant in Special Tayle, because *Special tail*, in this case none can inherit, but such Children as are by this man begotten upon the body of this wife named in the Grant: And if that wife dye, and the man taketh another wife, and hath issue of her body, the issue by the latter wife cannot inherit by virtue of such a grant; And if the first husband dye, and the wife marry again and have issue by a second husband, that issue cannot inherit.

There be several other estates *Special tail with limitation* in Special Tail, according to the Devises, Limitations, and conditions invented and settled by the Donor; as sometimes to a man and his wife and the heirs males of their bodies between them two to be begotten; in this Case the females cannot inherit.

So that if Lands be invested upon a man and his heirs males

B 5

of

of his body , and hee hath issue two sonnes and dyeth, the eldest enters , according to the grant, and hath issue a daughter and dyeth ; this daughter shall not inherit the Land, but the brother, because he is the heir male.

And if a man hath Lands granted to him, and to his heirs males of his body ; and he hath no sonne, but onely a daughter, and the daughter hath a sonne and dyeth living her father, and after that the Donee dyeth; in this case the *donee* dying without issue male in the Law, the sonne of his daughter, which is his grandchild, shall not Inherit, but the entayle is extinct, and the Land shall Revert to the Donor.

*Full Ten-
tures In-
gumbrances.*

These grants in Tail are the causes of much strife, and stir up many chargeable suits , though in my Judgement they are uselesse : for the intent of the donor

is

is feldome observed in them, he intending to preserve the memory of his own name to perpetuity; which cannot be, since a Fine and Recovery will *docke* it.

Tenant in Tail after possibility of issue extinct.

When Lands and Tenements ^{Possibility} be granted to a Man and his ^{of Issue extinct.} Wife in special Tail, and one of them dye before they have issue, the *Survivour* is Tenant in Tail after possibility of issue extinct; but if they have issue, during the life of the issue the *Survivour* cannot be said to be tenant in Tail after possibility of issue extinct. But if the issue dye without issue, and leave none to inherit by virtue of the Entayle; then the *Surviving Donee* is tenant in Tail after possibility of issue extinct.

And none can be Tenant in *Donee in Tail special Tail.*

Tenant's Law.

Tail after possibility of issue extinct, but one of the *Donees* in Special Tail; which Tenant in Tail after possibility of issue extinct, is not chargeable with committing of Wast, because the inheritance was once in him; but if hee doth Alien in Fee, it is a forfeiture of his estate, and the heir in Reversion may enter.

Tenant by the courtesie
fe. *Tenant by the Courtesie of England.*

When a Man marryes a Wife Seized in Fee-Simple, or in general Fee-Tail, or one that is heireffe unto Lands or Tenements in Special, and hath a child by the same Wife male or female born alive, and the wife die; whether the child be living or dead, the husband shall hold the same Lands during his Life, as Tenant by the Courtesie of England, which is a Tenure used

Tenants Law.

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in none other Country but in
England: And although the
child dye as soon as it is born, if it
were but heard cry the husband
shall hold the Lands after his
Wifes decease during his life
as Tenant by the courtesie; the
crying of the child being a suf-
ficient Testimony of its being
born alive.

Tenant in Dower.

*Tenant in
Dower.*

This kind of Tenant is al-
wayes of the feminine gender;
and is when a man is who seized
of Lands or Tenements in Fee-
Simple, or in general Tail, or as
Heir in Special Tail, marries a
Wife and dies; the Wife after
the death of her Husband, shall
have during Her life the third
part of such Lands or Tene-
ments as her Husband had du-
ring the Coverture, whether she
had any issue by him or not, so
she.

she be above nine years of age at her Husbands death.

Dower at
Common-
Law.

This is the Dower at the Common Law; but by custom in many places it is otherwise: for in some places she shall have the half, and in others the whole; and in all these cases she is Tenant in Dower.

Dower by
the Custom.

In Kent it is the custome, for the woman to have half her Husbands Lands *durante viduitate*, so long as she continues a Widow; but if she marry again she looses all: so likewise is the custom there, if a man marry a wife having an estate in Lands, &c. and she die without issue, he shall have half while he remaines sole: but if he marry again he looseth all. And in Kent they say, the reason thereof is, because they do not love that their Lands should help to maintain any Children but such as are of their own getting; but how

how sure they are hereof, *Ignoramus.*

Tenant for Life.

He that boldeth Lands or Tenements for the term of his own Life, or for Term of the Life of any other person; In this case the Lessee either for term of his own Life, or for anothers, is Tenant for term of Life; And this Tenant for Life hath in him the Freehold; this being the lowest degree of Freehold.

In a grant for term of Life, it is said to be from Lessor to Lessee. Note, there is Feoffer and Feoffee, Donor and Donee, Lessor and Lessee: so there is likewise Grantor and Grantee, Obligor and Obligee, Mortgager and Mortgagee.

He that enfeoffeth another in Lands or Tenements, is called the Feoffor; he to whom the feoffment

Donor and
Donee.

ment is made, is the *Feoffee*.

So when a man giveth Lands or Tenements to another in Tail, he is called the *Donor*; and he to whom the gift is made is the *Donee*.

Grantor
and Grantee.

And likewise he that letteth to another any Lands or Tenements to hold for term of Life, for Years, or at Will, is called the *Lessor*; and he to whom the Lease is made, is called *Lessee*: which *Lessee* for Life (as I said before) is *Tenant of Freehold*. So also he that pawneth Lands to another is called *Mortgagor*, and he to whom it is pawned is called the *Mortgagee*.

Mortgagor
and Mortgagee.

Tenant for Years.

Tenant for
Years.

Tenant for term of Years is, when a man demiseth, and letteth any Lands or Tenements to another to hold for a certain number of years agreed upon.

be-

between the Lessor and the Lessee; by force and vertue of which Lease, the Lessee entred into the said Tenements.

This Lease for term of years may be granted by word of mouth, and this is called a Lease parol: which shall bind the Lessor so long as the term is accorded for, if the Witnesses live to prove the Lease Parol.

But the more safe and usual way, is to take a Lease by Deed indented, which needs no other execution but only sealing and delivery. For by vertue of that Lease, the Tenant may enter whensoever he will.

But a Lease for term of Life must be executed by *Livery and Seisin*; because the freehold passeth with that Lease; which it cannot doe without *Livery and Seizin*. *Livery and Seizin in Lease for Life.*

This was the Case of *Allen and Waller* at the *Lent-Affizes* at *Maid-*

Maidstone 1654. Waller brought an *Ejectione firme* against Allen; the Defendant proved a Lease parol at a certain rent during his Life: which last word of the Defendants witness gave the verdict against him, because none can be Tenant for Life without *Livery* and *Seizin*.

Also if a man make a Lease to one for years, the remainder to another for Life, or in Tail, or in Fee, here the Lessor ought to make *Livery* and *Seizin* to the Lessee for years; or else nothing shall pass to him in remainder, though the Lessee enter and enjoy his term of years; but the Freehold and the Reversion remains in the Lessor. But if the Lessor makes *Livery* and *Seizin* to the Lessee, then the Freehold passes over to them in the Reversion, according to the grant.

Likewise if a man make a Lease

ought to be taken of Lands or Tenements ^{Lease for} to another for term of years, and ^{years takes} the Lessor dye before the Lessee ^{right after} ^{the delivery} enter into the Tenements; nevertheless he may enter, notwithstanding the death of the Lessor, because the Lessee hath right to the Tenements by vertue of his Lease, immediately after the sealing and delivery of it.

Tenant at Will.

When a man demises Lands ^{Tenant at} to another to hold to the Lessee ^{Will.} at the will of the Lessor, and by vertue of this Lease the Lessee is in possession; here the Lessee is tenant at Will, and hath no certain estate in the Tenements he holdeth, but the Lessor may eject him when he pleases.

But if the Lessee sow the ^{He that} Land, and the Lessor eject him ^{sows shall} out afterwards before the Corn ^{Reap if Te-} be ripe, the Lessee shall never ^{nant at} ^{Will.} the

theless have his Crop, and shall have free Egress and Regress to cut and carry it away, because he knew not when the Lessor would enter upon him.

*Not so in
Tenants for
years.*

But if a Tenant for years sow his Land so near the end of his term, that his Lease expire before the Corne be ripe, he shall not come to reap it; but the Lessor or other who hath the Reversion shall have the Crop, because the Lessee knew certainly the end and determination of his Term and Lease.

In like manner if a house be let to a man to hold at Will, and the Lessee enters the house, and bringeth in thither his goods and householdstuff, and afterwards the Lessor ejects him out; here he shall have liberty of egress and regress, to fetch away his householdstuff.

Also if one seized in Fee-Simple, Fee-Tail, or for term of Life,

in

shall have an house, and hath goods in
 that house, and makes his Will,
 appointing his Executors, and
 now to whosoever the
 house descends, the Executors
 shall have liberty in some rea-
 sonable time to enter and carry
 away the goods.

And if a man by Deed of Fe-
 offment grants certain Lands
 to another, and delivers him the
 Deed, but executes it not by Li-
 very and Seizin; the *Feoffee* in this
 case may enter that Land, and
 hold it at the will of the *Feoffer*;
 but the *Feoffer* may eject him out
 again when he will.

If a man dwell in a house as *Tenant at*
will, he is not bound to repair the said house, as a *Tenant*
 for term of years is bound to do.

But if a *Tenant at will* shall
 commit voluntary wast, as to
 pull down houses, and Cut,
 Grub, Fell, or destroy Trees,
 the Lessor may bring his Action
 of

of trespass against him for so doing ; and the Lessor upon a Lease at Will, if he hath reserved a yearly rent , may either distreyn , or bring an Action of debt for the same , if it be in Arreare , which he pleases.

Tenant by Copsy of Court-Roll.

*Tenant by
Copsy of
Court-Roll.*

This is a very ancient Tenure, and depends only upon custom; and there are so many and various kinds of customs in Copsy-holds in several Mannors and Countries, that it would take up a large volume to discourse of them all; which is not now our present Intention; but wee shall referre that Subject to a further opportunity, and here shortly in general terms set forth the nature of a Tenant by Copsy of Court-Roll. In a Mannor wherein there is a Custom, and hath been so used

time

to do time out of mind (for nothing
 on can be a Custome, unless it be
 referre *Tempore quo non extat memoria,*
 wither time out of mind,) that certain
 Acti- Tenants within the said Man-
 it be nor, have used to have Lands or
 es. Tenements, to hold to them
 and their Heirs in Fee-Simple
 or Fee-Tail, or for term of life,
 or upon any other condition, at
 the Will of the Lord after the
 custome of the same Mannor;
 such Tenants are called *Coppy-*
holders, that is, Tenants by Cop-
 py of Court-Roll: for a Coppy
 of the Court-Roll is all the evi-
 dence they have for their estates
 in the said Lands.

Now a Tenant by Coppy of *Coppy holder*
 Court-Roll, may not alien his *cannot alien*
 estate by Deed; for if he do, it is *by Deed.*
 a forfeiture to the Lord, and
 the Lord may enter, and take
 the forfeit.

But if any Tenant by Coppy
 of Court-Roll will Alien his
 Lands

Lands, he may do it by a surrender into the hands of the Lord, to the use of him that shall have it; and any kinde of estate that a Free-holder can make of his Land by Deed, a *Coppyholder* may do the same by surrender.

The Tenant by Coppy of Court-Roll is also bound by the custom to repair his houses; and if hee suffer any Tenement or house to fall down for want of reparaire, or if he pull it down, he forfeits his Coppyhold to the Lord of the Mannor.

Tenant in Coparcenery.

Tenants in Coparcenery There are two kinds of Tenants in Coparcenery; that is, *Partners at the common Law*, and *Partners by custome*.

After the course of the common Law, when a Man or Woman is seized in Lands or Tenements

ments in Fee-Simple, or Fee-Tail, and hath no other issue but daughters, and dyeth; the Tenements descend to the daughters equally as Coheires; and they shall enjoy every one an equal part thereof, as tenants in *Parcenary*, or *Copartnership*, and are all as it were one Heir to their ancestor; And these Coheirs or *parceners* may have a Writ called *Breve de participatione facienda*, to have the Lands equally divided and shared amongst them.

If a man seized of Lands dye without issue, and the Tenements descend to his *Sisters*; or if he hath no *Sisters*, and it descends to his Aunts: they be Coheirs or *parceners* as aforesaid.

If there be two *parceners*, one Marries and hath issue and dyeth, and afterwards her husband holdeth one half, as Tenant by the *Courtesie*; the Coheir or

C

par-

parcener that surviveth, and the Tenant by the Courtesie, may make partition between them. And if the Tenant by the Courtesie will not consent thereunto the Surviving Parcener may compel him by a writ *de Participacione facienda*.

But if the Tenant by the Courtesie desires to have partition, and the parceners surviving will not agree to it; the Tenant by the Courtesie cannot have remedy: for he cannot have a writ *de Participacione facienda* against the Surviving parcener, although the parcener may have it against him.

Parceners by Custom.

Partners by Custom.

This Tenure is Gavel-kindle and is used onely in Kent, except in some certain places in England besides, and in North Wales. But the men of Kent only claim this

this as a right remaining unto them unconquered; and it is thus: If a man be seized in Fee-Simple or Fee-Tail in Lands or Tenements of the Custom and Tenure of Gavel-kind, and hath issue divers Sonnes and dyeth; All the Sonnes shall be *Cohairs*, and equally inherit those Lands and Tenements as females doe, and may make partition by writ *de Participacione facienda*, and divide, as in the case of Daughters at the common Law.

Joynt-Tenants.

When a man being seized of *Joynt-Tenants* certain Lands and Tenements, doth thereof enfeoffe three or four, or more, to have and to hold to them and their Heirs; or to hold to themselves, for the term of their lives, or for anothers life, and they become seized by virtue of that Feoffment;

these are said to be Joynt-Tenants.

Disseizors.

Likewise if two or more disseize another of any Lands or Tenements, to their own use, the disseizors be Joynts-Tenants; but if it be but to the use of one of them, they be not Joynt-Tenants.

Now the nature of Joynt-Tenants is, that the whole estate shall goe to the Survivour.

As, if three be Joynt-Tenants in Fee-Simple, and the one of them hath issue and dyeth, the two that Survive shall have the whole Tenements, and nothing thereof shall goe to the issue of him that is dead: And if the second Tenant have issue and dye,

Survivour.

the third who is the Survivour shall enjoy the whole, and shall have it in Fee-Simple to him and his Heirs.

But now there is a difference in Tenants in Parcenary: for
if

if there be three *Copartners*, and one hath issue and dyeth before there be any partition made, that part which belonged to her that is deceased, shall descend to her issue. And if such a partner dye without issue, her part shall descend to her *Cokeirs*: so that this they have by descent, and not by Survivourship as Joynt-Tenants have.

And as the Survivourship ^{Survivourship} taketh place amongst Joynt-Tenants, so it doth amongst all persons who have Joynt Estate, or possession with others in Chattels real or personal.

As, if a Lease be made to several persons for term of years, the Survivour of the Lessees shall enjoy all the Tenements during the Term by virtue of the Lease.

And in like manner goods and Chattels personal, whereof there be partners, shall goe to

the Survivour. And if a Bond be made to many persons for one debt, and some of the obligees dye, the Survivour shall have all the debt: And so it is in all covenants and contracts amongst partners.

There may also be Joynt-Tenants for Term of life, and yet they may have several Inheritances.

Several Inheritances.

If Lands be given to two men to hold to them for Term of their lives, and to the Heirs of their two bodies, here these *Donees* are Joynt-Tenants for term of their Lives, and have several inheritances: For if one of them have issue and dye, the Survivour shall enjoy the whole during his life by Survivourship. And if the Survivour have also issue and dye, then the issue of them both shall enjoy the estate equally between them, as Tenants in common, and not Joynt-Tenants.

Now

Now the reason why these are said to have severall inheritances, is because it is impossible for them to have an heir between them, as a Man and a Woman may have.

Therefore the Law maketh this distinction according to reason and the form of the gift, that is, to the Heirs that one getteth on the body of his Wife; and so likewise of the other: so that by this reason it must of necessity be, that they have severall inheritances.

And if after the death of the *Donees*, the issue of one of the *Donees* dye also, leaving no issue of his body Surviving, in this case the *Donor* or his Heirs may enter into the moyety of the Lands, as in his reversion, though the other of the *Donees* hath issue living.

In like manner if Lands be given to two females and to the Heirs of one of them; in this

case, the one of them, that is, she that hath it but for life, hath a freehold, and the other hath a Fee-simple : and if she that hath the Fee dye, the other who hath the Free-hold shall enjoy the whole during her life by virtue of her Survivourship.

And if Tenements be given to two, and to the Heirs to be ingendred of the body of one of them; here the one hath Freehold, and the other Fee-Tail.

If there be two Joynt-Tenants, and they are seized of an estate in Fee-Simple, and the one by Deed grants a Rent-charge to another out of that part which appertaines to him; now during the life of the grantor, this Rent-charge is good and effectual, but it becomes void after the death of the Grantor. For the Tenant that Survivorth shall hold all the Land by Survivourship, discharged from the Rent-charge of the other. But

But amongst *Cokeirs* or parceners it is otherwise : for if there be two parceners in Tenements in Fee-Simple, and before partition one chargeth his part by his deed with a Rent-charge, and dyeth leaving no issue, whereby his moyety descends to the other partners ; here that part shall not be freed of the Rent-charge, because he cometh to this moyety by descent as Heir at Law.

Difference between Cokeirs and Copartners,

If Joynt-Tenants be desirous to make partition between them, they may do it by consent and agreement amongst themselves ; and such partition is good and binding against each other : but unlesse it be done by mutual consent amongst themselves, the Law cannot enforce or compel them, or either of them to do it ; because Joynt-Tenants cannot have a writ. *de participatione facienda*, as Tenants in Copartnership may have.

If there be a joynt Estate of Lands and Tenements made to a man and his wife, and to a third Person, here the third person shall have as much as the man and his wife, that is, one moyety: for the man and wife can have but half the estate, because they are but one person in Law.

In like manner it is if Lands were made to a man and his wife, and to two others; here the man and wife can have but a third part, and the two others the other two parts.

Tenants in Common.

*Tenants in
common.*

Such as have Lands and Tenements by severall title, and not joynt title, and none of them knoweth what is severall to him, whether it be in Fee-Simple, Fee-Tail, or for term of life; these are said to be Tenants in
com-

common, because they ought by the Law to hold, enjoy and occupie such lands and Tenements in common and undivided, and to take the profits in common; and do come to the same Lands and Tenements by several titles, and not by one joynt title.

If a man enfeoffe two Joynt-Tenants in Fee, and one of them *Aliens* his part to another in Fee; this *Alienee* and the other Joynt-Tenant be Tenants in common, because they now stand seized by several titles; the one Joynt-Tenant by virtue of the first Feoffment made to him; and the other Joynt-Tenant, and the *Alien* becomes seized in his moyety by virtue of the Feoffment of the other Joynt-Tenant; so that the several Feoffments make their titles several, whereby they become Tenants in common.

If there be three Joynt-Tenants,



Tenants. Law.

nants, and one of them aliens his part to another person in Fee, here the *Alienee* is Tenant in Common with the other two Joynt-Tenants, and of the other two parts the two Joynt-Tenants be seized joyntly, and the Survivor of them shall have the whole of those two parts by virtue of Survivorship.

If there be two Joynt-Tenants in Fee, and one of them gives his part to another in Tail, here the *Donee*, & the other Joynt-Tenant become Tenants in Common.

Also if Lands be given to two men, and to the heires of their two bodies, in this case these *Donees* have a Joynt-Estate during their lives; and if both of them have issue and dye, both their issues shall hold the land as Tenants in Common.

If Lands be given to two men and their Heires to hold to each a moyety, these are Tenants in Common.

If a man being seized in certain lands doth enfeof another in the half of it without limiting of the same half in Severalty at the time of the Feoffment made; that is, do not distinguish that half from the other by particular bounds and limits; In this case the Feoffer and the Feoffee shall hold their parts of those Lands in Common.

And as it is amongst Tenants ^{Difference} in Common in Lands or ^{between} enfeoffments in Fee-Simple or Fee-Tail, in the same nature it is also ^{Tenants for} between Tenants for term of life: as, if there be two Joynt-tenants seiz'd in Fee, & one of them lets to a man his part for term of his life, and the other Joynt-Tenant lets to another man his part for term of life; these two Lessees be Tenants in Common ^{Life and in} for the term of their lives. ^{Common.}

Likewise if a man lets lands unto two persons for the term of their

their lives, and the one of them grants all his estate of the part belonging unto him unto a third person ; then this third person to whom this grant is made, & the other Tenant for term of life, be both Tenants in Common, during the lives of both the Lessees.

If there be three Joynt-Tenants, and one of them releaseth all his right which he hath in the land by his Deed to one of his fellows, then he to whom the release is made, hath the third part of the lands by vertue of that release, and shall hold that third part with himself and his fellow in Common, and they two shall hold the other two parts joyntly.

Also if a joynt-estate be made unto a man and his wife, and to a third person ; and that third person releaseth his right which he hath in that estate to the husband ; then the husband hath

the

the third persons moyety, and the wife hath nothing therein at all.

And if such third person release his right in his moyety to the wife, not naming her husband in the release; then the wife hath the third persons moyety, and the husband hath nothing at all in it, but only *Jure uxoris*, in the right of his wife: because the release shall work to invest the estate in the person to whom the release is made, of all that appertained to him that made such release.

There may be also Tenants Tenants in in Common by title of Pre- Common by scription: that is, when two prescription. have holden lands in Common undivided; the one, one half from his Ancestors; and the other, the other half from his Ancestors, or from whom the estate is derived unto them undivided, time whereof the memory of man hath

hath not known the contrary; these are Tenants in Common, by title of prescription.

Now these Tenants in Common ought in some cases to have for the mayntenance of their possession several Actions; And in some cases they shall all joyne in one Action: for if there be two Tenants in Common, and they be disseized, they two cannot bring against the disseizor one Assize in both their names, but they must have against him two Assizes: for every of them ought to have an Assize of his half, because the Tenants in Common are seized by several Titles.

But amongst Joynt-Tenants it is otherwise, for if there be never so many of them, and they be disseized, they shall have but one Assize in all their names, because they have all but one joynt-Title.

There.

There is likewise a difference *Tenants by*
in suing real Actions between *divers*
partners that be in *Discents.* divers des-
cents, and Tenants in Common.
For if a man who is seized in
Lands in Fee dieth, leaving only
two daughters his Coheires,
and these two daughters enter,
and have each of them a son,
and dye without making any
partition between them, so that
the Lands descend equally to
their two sons, the one moyety
to one of them, and the other un-
to the other, and they enter and
enjoy the same in Common, and
be disseised; they shall not in this
case bring two Assizes, but one
Assize in both their names: for
though they came in by divers
discents, yet they be parceners,
and a writ *de Participacione faci-*
enda lyeth between them. Ne-
vertheless, they be not parceners
by reason of the seizin and pos-
session which they have from
their

their mothers , but in respect to their estate which descended to their mothers from their Grand-father.

And so in respect and consideration of their first descent that was to their mothers, they have a title in Parcenary which maketh them parceners ; and they be but as one heir to their common *Ancestor* their Grand-father, from whom the Land descended to their mothers. And therefore before partition made between them , they should have but one Assize, though they came in by several discents.

And likewise in personal Actions, in trespass, and such like cases which concern their Tenements in common , the Tenants in common ought to bring such personal Actions joyntly in all their names ; as for breaking their Houses, Closes, or Pastures; wasting, treading down, or other-
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wife spoiling their Grass; cutting
or felling of their Woods, spoi-
ling their Fruit-trees, fishing in
their Ponds, and such like. In
these and all such kinde of acti-
ons wherein they are joyntly
concerned, the Tenants in com-
mon shall have one joynt Acti-
on, & recover damages joyntly.

Likewise if two Tenants in
Common make a Lease of their
two Tenements to another for
term of years, reserving unto
themselves a certain yearly rent;
if the rent be in Areare, they
shall have one action of Debt
for the rent against the Lessee in
both their names, and not divers
actions.

If two persons or more, have *Tenants in*
Chattels real or personal in *Common by*
Common and by divers titles, if *divers Ti-*
ties.
one of them dye, the other who
Survive, shall not have his part
that is dead in those Chattels by
Survivorship, but the Executors
of

of him that dyeth shall hold and enjoy his part with them that Survive, as the Testator did or ought to have done in his lifetime.

It two persons have an estate in common for term of years, and one of them puts the other out of his possession, and enjoys all himself; then he that is so put out of possession, may bring his Ejectment against the other for his moyety.

But if two persons be possessed of Chattels personal in Common by divers titles, as of an Horse, or an Ox, or a Cow, or the like, and one of them takes it into his own possession, from the other; now the other hath no remedy, but to take this from him that hath done him the injury again, to occupy in Common, when he hath an opportunity; that is, in plain terms, he may come by it as well as he can.

C H A P.

CHAP. II.

Of Leases, Covenants and Conditions, Proviso's and Reservations, Surrenders and Assignments of Leases.

IN all Leases, as we have said *Leases and*
before in the title of *Tenant Covenants.*
for term of years, there must
be Lessor and Lessee: he which
demises or lets Land to Farm, is
the Lessor; and he who takes the
Land, that is, unto whom it is so
let or demised, is called the Les-
see; in more vulgar terms under-
stood by the country-Farmer by
the title of *Land-lord* and *Te-
nant.*

According to our general and *Firmor or*
common acception now-a-*Farmer,*
days, every Lessee for Life, *who it is.*
Years, or at Will, though it be
but of a Cottage, or never so
small a Tenement or House, is
called

called a Firmor or Farmer, and the premises a Firm or Farms; and so we say in the Writ, *A firma sua Ejecit*; which may be the reason they are called Farms.

But anciently the chief Messuage in a Parish or Country-town, was called by way of pre-eminency by the name of a Farm; and unto this Farm belonged great Demeafnes of all sorts, as Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Furzes, Heath, and also Messuages, Houses, Tofts, Mills, and the like: and all these are comprehended under the title of Lands.

Demeafnes. These *Demeafnes* were used to be let out to others for Term of life, years, or at Will.

These ancient Farms, (or Farm, which you will call them; which appellation or dialect differs according to the Country; In *Essex*, *Norfolke*, and *Suffulke*, they

they call them *Ferms* and *Fermors*; but the *West* and *best* are called *Farms* and *Farmors*) these *Farmes*, I say, attained to this title from the old *Saxon* word *Fermion*, which signifies to feed, provide or yeeld victuals; so that a *Farmor* signifies a victual-^{The name and nature is now altered.}ler; for anciently the Landlords did not reserve money upon their Leases for their Rent, but Corn and victuals, being such as the Farm yeelded of its growth; until it came by degrees into part money and part victuals; and at last, about the time of King *Henry* the first, the Rent reserved was turned into money, and so hath hitherto continued amongst most men.

Yet amongst some, where the ^{Ancient} *Rents* or *reservations* are not altered, the Rent is in Corn or victuals to this day, especially in *Colledg* and *Church-Leases*; and doubtless many

many of those ancient reservations received their utmost period in the general dissolution of the Religious houses; to the no small detriment of the Industrious Farmer.

Co. 7. par.
f. 23.

All Leases for years reserving rent, must be made of Lands and Tenements, whereunto the Lessor may come to distreyne; so that a Rent cannot be reserved by a Common person out of any

Co. 1. par.
Inst. p. 47.

incorporeal inheritance, as Advowsons, Commons, Offices, Tythes, Faires, Markets, Liberties, Franchizes, and the like: but if a Lease be made by Deed in writing of one of them, one may have an action of Debt by way of contract, but one cannot distreyne: but if any Rent be reserved in such cases upon a lease for Life, it is utterly voyd.

3. Lib.
Ass. 6.

Leases for term of years are Chattels; so that if a man have a lease of Lands for five hundred years

years, it is a Chattel, and goes to his Executor or Administrator, if he dispose not otherwise of it before his death.

Every man who is seized of lands in Fee-Simple, may Lease out his lands for what time or term he pleaseth himselfe; And ^{32. H. 8. C.} so likewise might Bishops have, ^{28. 13. El. C.} done formerly, before the Statutes restrained them. ^{10. 18. El. C. 6. 1. Jac. C. 3. Hern. law. of Convei. page 662, 67. 68.}

A Tenant in tail being at age, may by Deed in writing Lease out such lands as have been let to Farm twenty years next before the Lease made, reserving the old rent or more, the words *without Impeachment of Waste* must be omitted in it, and it must commence from the day of the making, or date. And if there be an old Lease in being, it must be surrendered, expired or ended within one year after the making of the new one, or else it is voyd. And a Lease

D thus

thus made, bindes the issue of the Tenant in Tail, if he dye before the term be out : but if the Tenant in Tail dye without issue, the *Donor* may avoid the Lease by his entry, and so may he in Remainder ; And though he accept the Rent, yet he doth not thereby confirm the Lease.

A man that is seized in lands in Fee-Simple or Fee-Tail, in the right of his wife, may make a Lease by Indenture in writing of his wifes land, in the name of himself and his wife, and she to seal thereunto, reserving the Rent to himself and his wife, and to the heires of his wife ; this Lease shall be good against the woman and her heirs after her death.

Bishops, Deans and Chapters observing the Rules aforesaid, may make Leases of such estates as they are seized of in Fee in Right of their Churches:
and

Tenants Law.

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and so may Masters, Provosts, and Fellows of Colledges, and Wardens of Hospitalls, if they be not prohibited by the private Statutes of their foundations.

But neither Tenant in Tail, nor any of the Persons before named, can let for any longer term then three lives, or one and twenty years; but for what term under they please: But if they do not observe these Rules in their demises, yet their Leases shall be good against them for their lives.

If a man demise any Lands Lit. Ten. or Tenements to another by l. i. Lease parol, the Lessor ought to be seized of the lands or tenements which he so lets, at the time of the Lease parol made; or else he cannot maintain an action for his Rent; for the Lessee may plead that the Lessor had nothing in the premises at the time of the Lease made, and

D 2

then

then he is barred of his Action; but if the Lease be made by Deed Indented, then the Lessee cannot plead this plea thereunto.

Cook, 1. If a man lets land to another by Lease, to hold the same at the will of the Lessee; the Law intends it to be at the will of the Lessor also, and he may put the Lessee out when he pleases; likewise if it be let at the will of the Lessor, it is intended at the Lessees will also; for the Lessor cannot force him to stay longer then he pleases.

Covenants.

A covenant made between Landlord and Tenant that the Tenant shall have a new Lease upon the Surrender up of his old Lease; And afterwards the Lessor makes a Lease by fine for more years to a third person; in this case the Lessor hath broke his covenant, although the Lessee did not Surrender; which
by

**NoysMax-
ims, P. 13.**

by the words of the covenant ought to have been the first act; because the Lessor by letting the Lease to a stranger, did disable himself either to take the Surrender or make the new Lease.

Rent in Arrears upon a Lease for years goeth to the Executors of the Lessor if he dye: As if *John Doo* makes a Lease for years to *Richard Roo*, and the Lessor covenanteth and granteth to pay unto the Lessor, his heirs and assigns, the sums of twenty pounds yearly during the term in the Lease granted; In this case if the Lessor dye, his Executors shall have the Rent in Arrears, and not his heirs.

John at Heath lets a Lease for years to *W. C.* and the Lessee covenants with the Lessor for him and his assigns, to build a Brick-wall or an house upon the Lessors land, or pay a collateral

Hern. Law
of Conv. p.
107, 108,
109.
Godbolt.
Rep. fol.
69, 70.

sum of money to the Lessor;
And afterwards the Lessee assigns over his term to another: here this covenant shall not bind the assignee, because the things were only collateral, and were not in *Esse*, nor part of the demise at the time of the Lease made.

Dyer. f. 51.

If there be a covenant in a Lease, that if the Rent be behinde and unpaid, for such a time, (that is, by the space of so many dayes after the usual day or time of payment in the Lease appointed and reserved,) then the Lease to be voyd; In this case, although the Lessor do accept of the Rent after such *failer* made, here no such acceptance of the Rent can make the Lease good.

MoysMax.
P. 16.

If a Tenant take a House and lands by Lease for years, and covenants with the Lessor to support, uphold and maintain
the

the houses during this term, and to leave the houses and lands in as good repair, plight and estate as he found them: In this case if it shall happen that the houses be casually burned by fire or lightning, or blown down by a tempest, or destroyed by any other accident; If the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may sue his said covenant against him at the end of his Lease; but if a Tenant make waft in cutting of wood or timber contrary to the proviso's, exceptions or covenants in his Lease, for such a breach the Landlord may bring his Action of Covenant before the end of the Term.

A man takes a Lease for years, and covenants and grants to and with the Lessor, for him and his Executors, to repair the houses as often as need requires: and

Hughes
Grand A-
bridgment,
1. par. p.
492. C.
19.

afterwards the Lessee assigns over his Lease to another, and the Assignee suffers the houses to decay for want of repairs; in this case the Lessor may bring an Action of Covenant against the Assignee, although he be not named in the Covenant.

Co. 1. par.
Inst. f. 41.

A Landlord lets a Lease, and covenants with his Tenant that he shall have sufficient hedge-boote, to be assigned him by the Landlord or his Bailiffe: In this case the Tenant may not take hedg-boote without assignment.

Perkins,
Tit. conditions. 738.

It a man by Indenture take a Lease of a house that is old, ruinous, or wanteth repaires, and Covenants with the Lessor to leave this house at the end or expiration of the Lease in good repaire: In this case he is bound to leave this house in good repaire; but if he do not covenant to do it, the Law then will not oblige him to do it.

Aa

A man by Indenture takes a Lease for years of a wood, and Covenants with the Lessor, to leave his wood in as good a condition as it was at the time of the Lease made; And during the term the wood is destroyed, and blown down by violent Windes, and Tempests: in this case the Landlord can have no Action against the Tenant for the not performing of this Covenant, because it is impossible for him to performe it; and the Law enforceth no impossibilities: otherwise it is if he take a house, and that be blown down.

Touching bonds for performance of Covenants, if a man take a Lease for years rendring Rent, and enter into bond to the Lessor to perform all Covenants and agreements contained and comprized in the Lease; if he fail in payment of his Rent, the bond is forfeited; for the

Hughes
grand A-
bridg. p.
499.

Goldsbor-
row. p. 168.

D: 5 .

pay.

payment of Rent is an agreement.

De & Str.

lib. 2. cap.

47.

If a man be bound in a bond, to repair the houses of the obligee as often as need shall require during a certain time, and afterwards the houses want reparations; In this case, although the *obligor* doth not know that they want reparations, yet hee is bound to take notice of it at his peril, for ignorance will be no excuse in this case, because he hath bound himself to it.

But if the condition had been that he should repair such houses, as he to whom he was bound should assigne, and after he assigneth certain houses to be repaired, but he that is bound hath no knowledge of that assignment; this ignorance shall excuse him in the Law, because he hath not bound himself to any reparation in certain, but

to such as the *obligee* will assigne; and if he assigne none, the *obligor* is bound to none; And therefore because he that should make the assignment is privy to the Deed, he is bound to give notice of his own assignment; but if the assignment had been appointed to have been made to a stranger, then the *obligor* had been bound to have taken notice thereof at his peril.

If a man makes a Lease for years with warranty, yet this is not a warranty in the Law, but a Covenant, because the Lease is but a Chattel; And if the Lessee be ousted, he may bring his Action of Covenant against the Lessor.

If *A.* be seized of twenty acres of land, and let the same to *B.* by Lease for life or years, and *A.* reserves to himself five shillings Rent payable at *Christmas*, and *B.* binds himself to *A.*

in

in a bond of one hundred pound to pay the Rent reserved upon the Lease justly according to the Law; if before any day of payment *A.* puts *B.* out of any part of the land, and he doth occupy the residue for the whole term, and will not pay any Rent, yet the bond is not forfeited; for by putting the Tenant out of parcel of the land, the whole Rent is in suspense: but if one day of payment be past before the *Ouster*, then the Tenant must pay the Rent, or else he forfeits his bond.

But if a stranger who hath no Right in the lands do put out the Lessee for years out of the same land before any day of payment, and keep possession thereof until the day of payment be past; In this case the Tenant ought to pay his Rent at the day whereon it is appointed to be paid, or else he forfeits his bond.

If

If three *Copartners* be seized of a Mannor, and one of them without the consent of the other two lets a Lease of the whole Mannor in her own name unto *I. D.* for five years, paying ten pound yearly at *Christmas* unto the Lessor and her heires, and *I. D.* enters into bond in five pound to pay the Rent accordingly; and before any day of payment is come, the other two *Copartners* who agreed not to the letting of the Lease, do put the Lessee out of the whole Mannor, and keep the possession till a day of payment be come: here the Lessee ought to pay a third part of the Rent reserved to his Lessor, or otherwise he forfeits his bond; because the other two *Copartners* who ejected him out, have right but in two parts of the Mannor.

A man makes a Lease to three persons upon this condition, that neither they nor any one of them

Perkins.
828. Co-
partners.

Hughes gra.
Abr. 1.
par. p. 428.

them shall alien, ser, or let that Lease to any other, without license first obteyned from the Landlord. Now if the Landlord do give license to any one of them to let or aliene, then the other two may alien without license: for the condition being determined to one, is determined to all.

In the same nature is a release where many persons commit a trespassse, if he against whom the trespass is committed do release one of the trespassers, that release is as effectual to all the rest, as if they had been particularly named therein.

Noy's Max-
ims, pag.
72.

If a Landlord do enter for a condition broken, or the Tenant surrender up his Lease, or his term be expired; yet the Landlord may have an Action of Debt for the Arcares of Rent if any be.

Dr & Sr.
lib. 1. C.
35.

If a man lets a Lease of lands
upon

upon a special condition, that is, that the Lessee shall not alien the same to such a man or such a man; then the condition shall be taken according to the words; And notwithstanding that condition, they may be aliened to any other, but to them to whom it is expressly prohibited that the lands should not be aliened unto: And if the lands in that case be aliened to one that is not excepted in the condition, then he may alien the land to him that is first excepted, without breaking of the condition: for conditions be taken strictly in the Law, and without equity.

As, if a Lease be made to *A.* upon condition that he shall not let or alien the same to *B.* if the Tenant alien it to *C.* and he alien it to *B.* the condition is not broken.

If a man be seized of lands *Perkins* in Fee, and let the same by Indenture

indenture of Lease to a stranger paying five pound Rent *per annum*, with a condition that if the Lessee will hold over ten years to him and his heirs, that then he shall pay twenty pounds *per ann.* and the Indenture is executed by Livery and Seizin to the Lessee: In this case the Lessor shall have an Action of Debt for the Rent Areare within the ten years; which proveth the freehold and the Fee are not in the Lessee before the ten years expired: but after the expiration of the ten years, if the Lessee doth continue the possession of the same land, and doth occupy the same by virtue of the *Indenture*, then he hath Fee, and shall pay the twenty pound as a Rent Seck.

Co. 1. par. . But if a man seized in lands
 Inst. f. 218. doth let the same land by Lease
 b. for Term of life, yeelding to
 him a Rose for the first six years,
 and

and if he will hold the land over the six years, then to pay three markes *per Annum*; Here the freehold is immediately in the Lessee.

A man makes a Lease for Perkins. years, with this condition, that 729, 730. if the Lessor do aliene the Reversion within the term granted by the Lease, then the Lessee shall have the Fee; and the Lessor doth aliene the Reversion in Fee by fine to a stranger; In this case the Lessee shall not have the Fee, for the Freehold and the Fee are lawfully in the *Co-tenant* before the Lessee can take it by condition: but if the Lessor had granted the lands to a stranger by Deed only, then the Lessee should have had Fee by the condition.

If a man have a Lease for Perkins. years, and demise or grant the 833. same upon condition, and dye; his Executors or Administrators shall enter for the condition broken;

broken ; for they are privy in right, and represent the person of the dead.

Lit. lib. 3.
C. 8.

If a man make a Lease for years upon a condition that the Rent shall be paid at *Christmas*, and before that time come, the Lessor give a general Release to the Lessee of all Actions and demands, this release doth not acquit the Lessee of the Rent, but the Lessor may sue for it, because it was neither due, nor to be paid at the time of the release made; and it is a thing not merely in Action, because it may be granted over.

Dyer f. 67.

If a Landlord lets a Lease for years to two Tenants to hold Joynly, with a condition that if the Lessees dye before the end of the term, the Lease shall be voyd : Now these Lessees make division, and one them aliens his part, and dyes ; In this case the Lessor cannot enter upon the
part

part of him that dyed, but the Alienee shall enjoy his half part during the life of the surviving Lessee.

A Lease made for years upon condition, that if the Lessee demise the premises or any part thereof, other then for a year, to any person or persons, then the Lessor and his heirs to re-enter; the Lessee afterwards devises this Lease to his Son by his Will; this is a breach of the condition.

If a man of his meer motion Dr & Str.
give lands to *H. H.* and to his heirs by Indenture, upon condition that he shall yearly at a certain day pay unto *John at Style*, out of the same land, a certain Rent; and if he do not pay the Rent, that then it shall be lawful to *John at Style* to enter; and if the rent in this case be not paid to *Jo. at Style*, the said *I. S.* may not enter into the lands by the Law, though

lib. 3. cap.
20. fo. 93.

though the words of the Indenture be that he shall enter; for there is an Ancient Maxim in the Law, that no man shall take advantage in a condition, but he that is party or privy to the condition: and this man is not party nor privy, and therefore he shall take no advantage of it.

Dr & S. 10. In many cases the intent of
C. f. 93. the party is voyd to all intents, if it be not grounded according to the Law.

As, if a man make a Lease to another for term of life, and after, of his meer motion, he confirmeth his estate for term of life to remain after his death to another and to his heirs: In this case that remainder is voyd in Law; for by the Law there can no remainder depend upon any estate, but that the same estate beginneth at the same time that the Remainder doth: and in this case the estate began before, and the

the confirmation enlarged not his estate, nor gave him any new estate. But if a Lease be made to a man for the term of another mans life, and after the Lessor, only of his meer motion, confirmeth the land to the Lessee for terme of his own life, the Remainder over in Fee; this is a good Remainder over in Fee.

No grant can be made, but to Dr & St.
him that is party to the Dæd, lib. 2. C.
except it be by way of remain- 20. P. 94.
der; And therefore if a man make a Lease for term of life, and afterwards the Lessor grant to a stranger that the Tenant for term of life shall have the land to him and heirs; that grant is voyd, if it be made only of his meer motion without recompence.

Likewise if a man make a Ibid.
Lease for term of life, and after grant the Reversion to one for term of life, the Remainder over
in

in Fee, and the Tenant Attorneth to him that hath the estate for term of life only, intending that he only should have advantage of the grant: his intent is voyd, and both shall take advantage thereof, and the Attornment shall be taken good according to the grant.

Co. 1. par. Inst. fo. 41. If a Tenant for the term of another mans life dye living the other man, he that doth first enter upon the estate, after his death, shall be Tenant for the other mans life, and shall be liable to the payment of the Rent reserved.

Perkins. 693.

If a Tenant hath a Lease for twenty years of lands and tenements, and grant the same lands for part of his Term to a stranger, reserving to himself forty shillings Rent; In this case he may distreyn for the Rent reserved, or have an Action of Debt at his pleasure, because by common

common Intendment he is to have the same land after the years determined ; because he hath granted but parcel of the years , so that the Remainder remains in him.

If Rent be granted to a man, *Idem* 108, he may grant it away to another before he be seized thereof.

If a man and his wife be ejected of a term in the right of his wife , and the husband bring an *Ejectione firme* in his own name, and do recover, and dye ; In this case his Executors shall have it ; and not the wife, because the Recovery in his own name did vest the term in himself. Co. 1. par.
Inst. f. 46.

If a man be posselt of a term of forty years in right of his wife, and make a Lease for 20 years reserving Rent, and dye ; here the Executors of the husband shall have the Rent for that term, but the wife shall have the remainder of the term when the twenty years Cook. ibid.

years is out: but if he had granted the whole term, she could have had nothing.

Id. 1. part. A release made to a Tenant
Inst. f. 270. for term of years before his entry, is voyd; but a release of the Rent before entry, is good.

The Tenant may grant away his Interest to another before entry; and although the Lessor do die before entry, yet the Tenant may enter into the lands; and if the Lessee dye before he enter, his Executors or Administrators may enter: and if a Lease be made to two, and one of them dye before entry, the other may enter by Survivourship; and a Lessor cannot grant away a reversion by the name of a Reversion, before the entry of the Tenant.

Co. 1. part. If a man grant to a Tenant for
Inst. f. 41. years, that he shall have so many *Estovers* as shall serve to repair his house, or that he shall burn within

within his house, or such like, during the term; this is appurtenant to the land, and shall run with the same as a thing appurtenant, in whose hands soever the same cometh.

If two Tenants in common do grant a Rent of ten shillings, this is several, and they shall be charged with twenty shillings Rent: but if they make a Lease, and reserve ten shillings Rent, they shall have no more but only ten shillings between them. Idem, r.
par. Inst. f.
197.

If two Copartners make a Lease reserving rent, they shall have this rent in common, as they have the reversion; but if afterwards they grant the reversion, excepting the rent, then they shall be Joynt-Tenants of the Rent.

If a man Leases lands for years reserving Rent, and a stranger doth recover part of the land, then the rent shall be apportioned Dyer 56.
& 82.

E ned

ned, viz. divided, and the Tenant shall pay having respect to that which is recovered, and to that which still doth remain in his hands according to the value, to each party proportionably.

If a man make a Lease excepting a Close and Wood, the Law giveth him a way to come to it.

Perkins.
817.

If a Tenant for years do take a new Lease for more years, this is a Surrender in Law of the old Lease. *Watt. and Maid-*

Hutton.
Rep. 104.

wells case. Hil. 3. Car. R. 1302. B. R.

Noys Max.
74.

A Lessee for years cannot surrender before his term begin; neither can he surrender part of his Lease, but he may grant part of it.

If a Tenant for life or years remove his goods out of the house and land, by reason of the greatness of the Rent, or for any other cause, and the Lessor do enter into the house and lands; this

this is no Surrender of the Lessee.

If a Tenant for years assigne ^{Idem. p. 72.} over his term and dye, his executors shall not be charged for Rent due after his death.

And if the Executors or Administrators of a Lessee for years do assigne over their right in the Lease, there lieth no Action of Debt against them for rent after such an Assignment by them made.

If a Tenant for years assigne ^{Hern. law of Conv. P. 110.} his Lease to another, the Landlord may charge which of them he will: but if he once accept of the rent from the assignee, knowing of the assignment, he cannot afterwards bring an Action of Debt against the Lessee, for rent due after the Assignment.

If a Lessor grant away the re- ^{Popham} version, after the assignment of ^{55.} the Lessee; In this case the grantee cannot have an Action of
 E 2 Debt

Debt against the Lessee for the rent, because there is no privity between them.

Perkins.
336.

If a Lease for years be made to a man without any consideration, the Lessee shall be Seized to his own use.

Dr. & St.
1. 1.C. 24.

If a man make a Lease of lands to another and to his heirs for the term of twenty years, intending that if the Lessee dye within the term, that then his heirs should enjoy the lands during the term; In this case his intent is voyd: and if the Lessee dye, his executors, and not his heirs shall enjoy the term: for by the Law of the land, all chattels shall go to the executor, and not to the heir.

Hern. L. of
Conv. p.
104.

If a man lets a house with the appurtenances, no land passes thereby: but if it be with all lands thereunto belonging, here the lands used with the house do passe.

If

If a man take a Lease of his own land by Indenture, he is then concluded to say that the Lessor had nothing in the land at the time of the making of the said Lease; but after the Lease is out, the Estoppel is removed.

If two persons be Joynt Tenants of a Lease for years, and one bid the other goe out of the house, and he goeth out; he that goeth so out may have an *Ejectione firme* against the other, as well as if he had Ejected him out by force.

Terms de
ley, Estop-
pel.
Co. x. par.
Inst. f. 47.

Beverlies
case 24.
Car.
Claytons
Rep. p. 113.

C H A P. III.

Of Payment of Rent, Acceptance, and Extinguishment thereof; Demands, Entryes, Dates, Continuance, Limitations, and Determinations of Leases.

IT ought to be a principal care of a Tenant, above all things to provide his rent at the time of payment, whereby he may avoid much *Slavery*, and *Knavery*, of cruel biring Landlords.

If a Tenant be to pay his rent to his Landlord at our *Lady-day* and *Michaelmas*, or within fourteen or fifteen dayes after either of the said Feasts; in this case, he is not bound to pay his rent until the last day limited for payment: for that is the legal day of payment, and the other before voluntary. And

And if there be a clause that if the rent be behind by the space of fifteen dayes (more or lesse) after any of the said dayes of payment, then the Lease to be void; In this case, if the time limited be 15 dayes, then the Tenant shall have thirty days after any of the said Feasts, to save his Lease: But if the clause in the Lease be, that if the rent be behind for the space of fifteen dayes next after either of the said Feast dayes of payment; here the Tenant hath but fifteen dayes only allowed him: and so the diversity is to be noted in this case in the words of a Lease, which with a very little and scarce observable alteration makes so much advantage for the Tenant. *Co. 10. lib. f. 227.*
Cook. 1. par. Institutes, f. 202.
Hern. Law of Conv. p. 23.

If a man take a Lease for Hern. p. years to pay his Rent at our *La- 22, 23.*

E 4

dy-day

dy-day and *Michaelmas*, or within fifteen dayes after either of the said Feasts, and the Landlord dye after either of the said Feasts, and before the fifteen days be out; the heir in this case shall have the rent then; for the first day is but voluntary, and the legal day of payment is at the end of the fifteen dayes: and if the Tenant before that day pay the rent, such payment is voluntary, and not satisfactory; but if payment be in the morning, and the Landlord dye at Noon, it is good to give Seizin: and though this payment be voluntary, yet it is satisfactory against the heir. *Hare and Savills case. M. 7. Jac. in com. B. Brownl. Rep. 2. part. p. 273.*

Moys Max.
p. 80.

If a Tenant for years be to pay his rent at *Michaelmas*, and to perform other covenants; and if he be bound in any obligation to pay his rent precisely at the day,

day, he must in this case seek out his Landlord to pay him; but if his obligation be only to perform the Covenants in the Lease, he may then tender his rent upon the land, (if no other place be by agreement appointed for the payment thereof) and it is sufficient: for the payment is of the nature of the rent reserved. *Manly and Jennings case, Pasch. 10. Jac. in C. B. Brownh. Rep. 2. par. p. 176.*

When one is to pay rent at a certain day, he hath all that day till night to pay it; but if it be a great sum, he must then have it in readiness so long before Sun-set, as they that are to receive it may see to tell it, for they are not bound to tell it by Candle-light.

If a *Parson* let his *Glebe-lands* to a lay-man, the Tenant shall pay the Parson Tythes of that land besides the rent: for the

tythes are of Common right.

Co. 1. part. **If a man let out by Lease a stock**
 Inst. f. 47. of cattel or other goods, (as
 8292. it is very usual now-a-dayes to
 Lease out Silk-stocking-frames
 to the *Weavers*,) and the rent be
 to be paid at several dayes; if the
 rent in this case be in *Areare*,
 the Lessor cannot bring an *Action*
 against the Tenant or occu-
 pier thereof, until all the dayes
 be expired; In like manner as it
 is in an Obligation with condi-
 tion for several payments; be-
 cause these are personal con-
 tracts. But it is otherwise in
 case of a Lease for years, which
 is a real Contract, for there the
 Landlord may have an *Action* of
 Debt against the Tenant, after
 every day of payment, if default
 be made; or he may distreyn, at
 his Election.

If there be two Joynt-Ten-
 nants, and they make a Lease
 for years, by Parol or Deed

Poll

poll, and reserve Rent to one of them; this shall enure to them both: but if it be by Deed indented, it shall enure to him alone, by way of conclusion. *Cook. 1 par.*

Inst. f. 47. Co. 8: l. f. 70, 71.

If an heir let a Lease to a Tenant for life, and reserves a Rent; against whom the mother of the heir recovers her Dower and dyeth; the Tenant shall have the land again for his life, and the rent is revived. *Cook on Lit. f. 41.*

If the Successor of a Parson or Vicar accept the Rent of a Lease for years made by his predecessor; yet this acceptance is worth nothing, for the Lease is voyd by death; but of a Lease for life, it is otherwise. *Cook 1. 34. f. 65, 66. Pennants case.*

But if a Bishop accept the Rent upon a Lease for years, he shall never avoyd it; for it was but voydable only; and his acceptance hath now confirmed it.

Acceptance.

If a man have lands in the right of his wife, and he and his wife let these lands for years, reserving a Rent, and afterwards the husband dyes, and she before any day of payment takes another husband, who accepts the Rent and dyes: by this acceptance the Lease is affirmed.

In like manner if a man and his wife let the lands of his wife for years rendring Rent, and the husband dyes; if the wife accept the Rent, it is a good Lease.

Terms of the Law, Acceptance.

But if a Tenant for life Lease lands for years and dyes, the Lease is voyd; and the Rent which is reserved upon the Lease is determined. And although he in Remainder do accept the Rent, yet his acceptance will not make it good: for when it is once voyd by death, no acceptance after will make it good.

So likewise, if a Tenant in Dower

Dower lease for years and dye;
the Lease is voyd, and accep-
tance of the Rent by the Heir
will not make it good again.

A Lease for years may be con- Noy: Man
firmed for a time, or upon con- P. 78.
dition, or for a piece of the land;
but if it be a Frank-Tenement,
it shall enure to the whole abso-
lutely.

Observe this difference be-
tween a Lease for life, and a
Lease for years: in case of a
Lease for life, though the conclu-
sion of the condition be, that it
shall be voyd, yet acceptance of
the Rent due after the breach,
doth affirm it, and make it good
again. *Pennants case. 38. Eliz.*

Co. 3. l.

If a Parson let a Lease for Cook Inft
years of his Glebe-land, if it be f. 300.
confirmed by Patron and Ord-
inary, it shall bind the Successor;
or else not.

If a Lease be made to a man Dr & St. 23
l. 20. chap.
for f. 93.

for the term of another mans life, and afterwards the Lessor only of his meer motion, confirmeth the land to his Lessee for term of his own life, the Remainder over in Fee; this is a good Remainder in the Law.

Hern. l.
conv. p.
118.

If a man let lands for life or years, reserving Rent, and do enter into any part thereof, and take the profit; the whole Rent is thereby extinguished, and shall be suspended during his holding thereof. *Leonards Rep.* 110. *Goddards case, Mich.* 34. *Elizabeth. com. Banc. Owens Rep. fol.* 10.

Co. l. par.
last. f. 202.

If the Tenant come to the Landlord at any place upon the ground at the day of payment, and tender his rent to the Landlord, it is good enough, and shall save the condition; and the Landlord is bound to receive it, although it were not at the most notorious place, nor last instant of the day; for he may tender his

his rent at any time of the day, although the last instant be the legal time of payment.

But observe by the way, that a tender of rent must be of the whole rent, without deduction of Taxes, or Assessments, or any other charges; for stoppage is no payment in the Law. *Tr. 23.*

Car. in B. R. Regist. pract. p. 327. *Co. 1. par. 1. inst. f. 202.*

If a man let land by Lease for years to another, reserving the Rent of the land to be paid at *Michaelmas* and our *Lady-day*, or within fifteen days after, and for default of payment to re-enter; In this case it is sufficient and lawful for the Tenant to tender his rent the last hour of the last day, if the mony can be told in that time before it be dark; and so it is sufficient for the Landlord to demand it the same hour.

If a Lease be made with this *1. par. Inst.*
 Proviso, That in case of *non-* *P. 211.*
 payment, the Landlord to Re-
 enter;

enter ; here if the Landlord distreyne, he may not Re-enter, but he may accept of the rent and yet reenter ; but if he do receive the next rent again, then he cannot Re-enter, for that establisheth the Lease. Entry into an Acre of land, in the name of the whole, is a good Entry, if the land do all lye in one County.

In a Lease for years, if the Lessee covenant, that if he or his Executors or Assignes do aliene, that then the Lessor shall Re-enter, and afterwards he makes his wife Executrix and dyes ; and the widdow marries again, and her second husband Alienes ; In this case the Lessor may Re-enter ; because the second husband

Dr & St. l. is assignee in the Law.

1. c. 20. f.

36. If a man make a Lease for term of years, yeelding to him and to his heirs a certain Rent upon condition, that if the Rent

be

be behind and unpaid by the space of forty days after any of the days of payment, that then it shall be lawful to the Lessor and his heirs to Re-enter: And after the rent is behind forty days, and is demanded by the Lessor, and is not paid; the Lessor dyeth, and his heir enters: In this case his entry is lawful; but if the Lessor had dyed after the Feast-day, and before the fortieth day, so that he had not demanded the Rent, and his heir had demanded the Rent at the fortieth day, and for non-payment he Re-enters; in this case his Re-entry is not lawful.

If a Lease be made to *H.* for Dyer 254. one and forty years if he live so long, and if he dye within the aforesaid term, that then the wife of the aforesaid *H.* shall have it for the residue of the said years; this limitation is voyd: for if *H.* dye, the term ends, and his

his wife shall have nothing in it.

Dyer f. 80. If a man let all his meadow in D. containing ten Acres; if there be twenty Acres of it, all passes in this case.

r. par. Inst.
f. 48.

If a man make a Lease for years, and afterwards makes a Deed of Feoffment, and delivers Seizin; If the Lessee be upon part of the premises, and neither know nor assent to it, yet the Livery is voyd: for though the Lessor hath the Freehold and Inheritance in him, yet the possession is in the Lessee; and Livery must be given of the possession: but if the Lessee be absent, and hath neither wife, children, nor servants (though he have cattel) upon the ground, the Livery shall be good.

Dates.

If a Lease be made to hold from the day of the making, or from the day of the date, or from the date, the Lease shall begin the day after it is delivered.

If

If the *habendum* of a Lease be for a term of one and twenty years, without mentioning when it shall begin; it shall then begin from the Delivery. So if an Indenture of Lease bear Date upon dayes impossible, as *Feb. 30. or March 40.* There being no such days in one Accompt, in this case if the term be limited to begin from the Date, it shall take effect and beginning from the Delivery, as if there had been no Date at all.

Co. 1. par.
Inst. f. 46.

Cro. 2. par.
263, 264.

If lands descend to an heir, he may make a lease thereof before his entry into the same. If a man makes a Lease to day to one for ten years, and to morrow makes another Lease of the same lands to another person for twenty years; this second Lease shall be good after the first is expired, for so many years as remaineth therein to come.

Neys Max.
P. 67.

If a man make a Lease to a

Co. 1. par.
Inst. f. 45.

no-

nother for one and twenty years, and after another Lease to commence from the end and expiration of the said term of years, and after the first Lease is surrendered; In this case the second Lease shall commence presently upon the surrender.

But if it had been made to commence from the end of the said one and twenty years, there though there had been a surrender, yet it should not have commenced till the term had been out; so that by this you may observe the Law puts a distinction between term of years, and time of years.

If a man lets lands to another to hold till the Lessee hath levied twenty pounds; this is a good Lease, notwithstanding the incertainty.

Bracton saith that every Lease must have a certain beginning and ending; *Quia id certum est, quod*

quod certum reddi potest. Yet you see by the case before, this rule is contradicted, so that it holds not alwayes, although in the generality it doth.

For if a man make a Lease to another for so many years as *I.S.* shall name, although this be uncertain at the beginning; yet when *I.S.* hath named the years, it is then good for so many years as he names.

So likewise, if *A.* be seized of lands in Fee, and do grant to *B.* that when he pays him twenty shillings, that then from that time he shall have and occupy the land for one and twenty years; and after *B.* pays unto *A.* the twenty shillings; this is a good Lease for one and twenty years from that time. *Co. 6. l. f. 34, 35.* *Co. 1. par. 1. f. 45.*

If a Parson make a Lease of his Glebe for so many years as he shall be Parson there; this is voyd, because of the uncertainty there-

thereof ; for the Parsons time there terminates with his life, then which nothing is more uncertain.

If a Lease be made for one hundred years, if *A.* and *B.* live so long ; in this case if either of them dye, the Lease is ended.

Co. 1. par. Inst. f. 45. If an Infant who is seized of Lands in Soccage, make a Lease at his age of fifteen years ; this is good, and shall bind him.

Co. 1. par. Inst. f. 46. If a Tenant in Fee marry a wife, and make a Lease of his lands for years and after dye, and the wife is thereof endowed, here she shall avoyd the Lease, but after her death it shall be in force again against the heir.

Co. lib. 8. f. 49. If a man have a term of years in the right of his wife ; if she dye, it remains to him ; but if she survive him, it remains to her, and not to his executors, without he dispose of it in his life-time.

If

If a man license another to enter and occupy his lands, this is a good Lease for years in Law.

Brownl. 2. part p. 250.

A Lease for years, although it be never so long, cannot be intayled, because it is a Chattel, which cannot be turned into an inheritance. *Styles Regist. pract. p. 197.*

If a man seized in Fee-Simple let a Lease to another, to have and to hold the same lands for term of life, and do not mention whose life; it shall be taken for the Lessees life; because the act of every one shall be taken most strongly against himself.

But if a Tenant in Tail let such a Lease without expressing whose life, it shall be taken for the life of the Lessor.

If a Joynt-Tenant make a Lease for years, of his part, though the Lessee never had possession, or though it be to begin at

Co 1. par. 185.

at a day to come; and the Joynt-Tenant that made it dye before the day ; yet the Survivour shall be bound by the Lease, for the Lessee hath a present Interest.

If two take a Lease for their lives, and make partition, either of them dying, his part immediately Reverts to the Lessor.

Golds Rep.
187.

If there be two Joynt-Tenants for life, and one of them makes a Lease for eighty years, to begin after his death, and after dyes; This Lease is good against the Survivour.

Dr & St.
lib. 2. c.
33.

If a Lease be made to the husband and the wife, yeelding a greater rent then the land is worth; if the husband dye, the wife after the husbands death may refuse the Lease, to save her from the payment of the rent: but if the husband overlive the wife, and then make his Executors, and dies; if they have Assets, that is, if they have goods sufficient

ent of their Testator to pay the rent, they cannot refuse it : but if they have not goods sufficient of their Testator, to pay the rent to end of the term, if they relinquish the occupation, they may by special pleading discharge themselves of the rent, and the Lease.

If I let lands in which are Mynes, or Trees, I cannot enter to take the Trees, or Mynes, but am a trespasser, unless I do reserve such a priviledge to my self when I let the lands.

But if a Lessor do come upon the grounds Leased, he is no trespasser, for it shall be intended, that he came to see if Wast were done.

If a tenant for years, happen by any Casualty to lose his Lease, yet he shall not lose his term in the lands let by such Lease which is lost, if it can be proved that there was such a term let

F

to

to him by Indenture; And that it is not determined.

C H A P. IV.

Of Corn sown, who shall have the Crop of Estovers, and Trees blown down; of Distresses, what things may be distreyned, and how used; who may take a distresse, for what cause, when, and where.

IT is a usual saying, and generally received opinion, that he that sows must reap: but as there is no general rule without some exception; so this holds not always, that he that sows shall reap.

But touching the sowing of corn; if the Tenant be outed, or his term ends before it be ripe, who shall have the corn I have already set down in the first *chapter*:

pter, under the Title of *Tenant at will*: for if a **Tenant at Will** sowe his land, and the Landlord put him out before the corn be ripe, he shall have liberty to reap and carry away his corn, because he knew not when his Landlord would put him out.

But it is contrary with a **Tenant** who hath a Lease for years: for if his Lease be out before the corn be ripe, his Landlord shall have it; because he knew the end of his Lease: wherefore if he sowed, it is in his own wrong, unlesse there be a covenant in his Lease between the Lessor and him, that he shall have his way-going crop.

But if a **Tenant at will**, set Roots, or sow Hemp or Flax, or any thing that brings in an yearly profit, if after the planting the Lessor out him, or if the Lessor dye, yet the Tenant or his Executors shall have the Crop.

But it is otherwise if he plant young Fruit-Trees, or other young Trees, as Oaks, Ashes or Elmes; or sow the ground with Acorns; In this case if the Lessor out him, he shall have none of these, because these yield no yearly profit at present.

If a Tenant for life soweth the ground, and dye before the Crop be ripe, his Executors shall have it; and so they shall have grasse if it be cut, but if it be *unmown* they shall not have it, for that is part of the inheritance till it be severed.

Every Tenant that hath an Estate incertain, shall have the corn sown by him; though he be outed before it be ripe.

See mycon- If a man be seized in land *Jure*
sultam pa- *uxoris*, and sow this land, and
cis, P. 83. dye before the corn be ripe;
 his Executors shall have the
 Crop: but if they be Joynt-Tenants of lands, and the husband
 soweth

soweth the ground and dyeth,
the wife shall then have the
Crop.

But if a woman who holds Hern. l. of
land, *Durante viduitate sua*, while con. p. 239.
she continues her widow-hood,
and sowes the ground, and mar-
ries a husband before the corn
be ripe; here the Lessor shall
have the corn, because her estate
ends by her own act.

If a man lets a Lease of his Noy. Max.
wifes land, she not joyning with P. 70.
him; this Lease is voyd after his
death: but if the Lessee have
sown the land, he shall reap the
Crop.

A Tenant holds by Lease, and Cowel.
the land is recovered against the Inst. p. 141.
Landlord by a title *Paramount*;
in this case if the Tenant have
sown the land, he that hath re-
covered it shall have the Crop,
if it be not reaped before Judg-
ment.

There is three kinde of *Esto-Flowers or*
Ters Boote.

vers in the Law, which is incident to the estate of every Tenant, whether it be for life or years.

House-boote, of which is two kindes; the one to repair the houses, the other to burn, which is called *Fire-boote*.

Then there is *Estovers*, called *Plough-boote*, that is, stufte to mend the Tenants Ploughs, Carts, Harrows, Waynes, and making Rakes and Forkes for getting in his Hay and Corn.

Thirdly, there is another kind of *Estovers*, called *Hedge-boote*; this is Timber and Wood for making Gates, and Styles; and Boughs and Bushes for mending and repairing hedges, and fences.

So there is *Estoverium edificandi & ardendi*, house-boote.

Estoverium arandi, or Plough-boote.

Estoverium Claudendi, or hedge-boote.

Esto.

Estover is a word something harsh in sound, being unusually heard in the Ears of Tenants; but *Boote* is well known unto them.

The one is *Norman*, the other *Saxon*; and both have the same signification, viz. an allowance, Compensation, or Satisfaction. Any of all these *Bootes*, a Tenant may take without assignment of the Landlord, unless he be by the Landlord restreyned by special covenant in his Lease; which is very usual amongst many Landlords, especially if the Farm be any thing considerable; then they commonly limit the Tenant how much *House-boote*, or *Plough-boote*, or *Hedge-boote*, he may take without assignment; and how much by assignment.

If a Tenant for life or years, Co. l. 4. 3. t. cut down trees, or pull down houses, or suffer them to fall down; the Lessor shall have the

F 4

trees,

trees, and timber, of the said houses: for the Lessee had them only as things annexed to the land; and this severance will not give him a greater estate in them.

The Landlord shall likewise have Windfals, that is, Timber-trees blown down by Wind and Tempest, because they are parcel of his Inheritance; so that the Tenant for life nor years cannot have them, unless it be to build withal where houses are in decay. But if they be *Pollards* without Timber, the Tenant shall have such when they are blown down.

Distress.

Distresse is a Law of custome, that is, if Rent be in Arrear and unpaid, the Landlord may take a lawful distresse, and that he shall put in pound Overt, there to remain until he be satisfied of what he distreyned for.

Dr & St.

So that if a Landlord distreyn
L. 1. C. 5. the Cattel for Rent, and put
P. 10. them

them in a pound overt, and the Beasts dye there for lack of meat, it is at the peril of him that ow'd the Beasts, and not of him that distreyned : for in him that distreined there can be assigned no default, but the default was in the other, because the rent was unpaid.

Now a distresse must be made of such a thing wherein some body hath a certain and valuable property ; therefore such things as are *fer & natura*, cannot be distreyned ; neither can any one distreyn a horse if any body be on the back of him ; nor any thing which a man holds in his hand, or carryeth about him, annexed to his body.

And although the Law be, that a Landlord may distreyn any thing that he findes *Levant* or *Couchant* upon the premises for his rent behinde, whose goods or Chattels soever it be, and may

deteyn the same untill his rent be satisfied ; yet this general rule hath some restriction and limitation, for there are several things whereof a distress cannot be taken.

What cannot be distreyned for Rent.

Noys Max.
P. 124.

Terms of the Law, titl. distress.

Such things as are for the maintenance and benefit of trades, cannot be distreyned for Rent ; as an horse in a Smiths Shop, nor an horse in an Inne cannot be distreyned for the Rent thereof ; nor the materials in a *Weavers Shop*, for the making of Cloth, nor Cloth or garments in a *Taylers Shop*, nor sacks of Corn, nor Meal in a Mill for the rent of the Mill, nor any thing that the Tenant hath distreyned for *damage feasant*, for that is in the custody of the Law.

Cook, on
Lit. f. 47.

Likewise Oxen of the Plough may not be distreyned, nor a Millstone, though it be raised to be picked, so long as it lies upon the other Stone.

Nei.

Neither may a distress be taken of *Sheep*, if there be a sufficient distress besides.

Neither can a man sever horses joyned together, or to a *Carr*.

Likewise victuals, nor sheafes *Cook ibid.* or shocks of Corn cannot be distreyned : But Carts or Waggon's loaded with Corn may be distreyned either for Rent, or *damage feasant*.

No mans Tools wherewith *Cook ibid.* he works at his trade shall be distreyned, as the Carpenters Axe, or a Scholars Books, &c.

Neither can any thing which is fixed to the free-hold be distreyned, as Furnaces, Coppers, or Fats fixed for Dyers or Brewers, (although the Tenant may remove them during the term) nor the Windows or Doors of a House, while they are upon the hinges. But if they be removed off from the hinges, they may be distreyned.

Thes

The Landlord cannot distreyn Tables dormant in the house of his Tenant, nor any thing which cannot be attached in an Assize; neither can any thing be distreyned, of which the Sheriff cannot make a *Replevin*, or that cannot be restored again in as good a condition as it was when it was distreyned.

But a man may distreyn the Beasts of a stranger (that come by escape) for Rent, though they have not been *Levant* and *Couchant* upon the ground, according to *Cook. 1. par. Inst. f. 47.*

The Lord of a *Leet* may sell a distress taken for an *Amerciament* in his *Leet*, as the King may sell a distress, because it is the Kings court.

Dr. & St.

1.2. C. 27.

If a man distrein goods or chattels, he may put them where he will, either in a pound *Covert*, or *Overt*: but if they take any harm, he must answer for them.

If

If they beliving Cattel, they ought to be put in a common Pound, or else in some open place, as in his own yard or close that distreyned them, or in some others by his consent; so that the owner may come lawfully to feed them: And the owner of the Cattel must have notice where they are, if they be not in a common Pound; and then if they dye for want of meat, it is the owners fault (as is said before,) but if they be in a pound covert, or out of the county, and dye for want of meat, then he that distreyned them shall make satisfaction for them.

Cattel taken *damage feasant*, Kitchin. may be impounded in the same f. 207. pound, where they are *damage feasant*; but goods or Cattel taken for other things may not.

No man ought to drive a distress out of the county where it is taken, nor out of the hundred, Co. 1. par. Inst. p. 57. Rastal title distress. 11. Wingat. abt. p. 133.

dred, but to a pound *Overt* within three miles ; neither may a distress be impounded in several places ; nor above four pence taken for the Fees of impounding one whole distress, on pain of five pound.

Dr & St. *If a man distreyn Beasts damage*
 l. 2 C. 27. *feasant, & put them in the pound*
Overt, within the same county, not above three miles out of the hundred; and the owner suffers the Beasts to dye for lack of meat, the loss is his own, and he that distreyned them, may be at liberty to bring his action for the trespass if he will ; and if it be not a lawful pound, then it is at the peril of him that distreyned them ; and so it is if he drive them out of the shire, and they dye there.

Ibid;

If the owner of the Cattel tender amends to him that distreyned, and he refuse it, yet the owner may not take his Cattel out of the

the pound; for he may not be his own Judge: and if he do, a Writ *de parco fracto* for breaking the pound liech against him; but he must sue a *Replevin* to have his Cattel delivered him out of the pound, and afterwards plead his tender of amends, of which the Jury must end the controversie.

If the owner of the Cattel pro. Ibid. cure a *Replevin* to deliver them, and he that distreyned them resists it, and will not deliver them; in this case if they dye after for want of meat, it is at the peril of him that distreyned, and the owner shall recover damages against him in an Action upon the Statute for not obeying the Kings Writ.

If a man sends his servant to take a distress for a Rent or Service, who puts it in the pound; if the owner of the Beasts or a stranger take them out, I shall have an Action *de parco fracto*, for breaking of the pound. And

And if one distreyn Cattel, and pound them in another mans close with his consent, and the owner of the Cattel come and take them out; in this case he that made the distress shall have his action for pound-breach; and the owner of the close, an action of trespassse for breaking of his close.

Co. 1. par.
Inst. f.
204, 205.

There be certain cases where a man may distreyn of common right, and where not of common right: a man may distreyn for rent-Service, Homage, Fealty, Escuage, Suit of Court, or for rent reserved upon a gift in Tail, Lease for life, years or at Will, though there be no clause of distress in the Lease; because these distresses are of common right.

Dr & St.
1. 2. C. 9.

But for debt, Accompt, trespassse, or for Reparations or the like, a man cannot distrein, neither can any distress be taken for any Services which are not certain.

certain, nor can be reduced or brought into any certainty. And upon an Avowry damages cannot be recovered, for that which neither hath certainty, nor can be reduced to certainty.

Neverthelesse (although it be a paradox) in some cases there may be a certainty in an incertainty: As for a man to hold of his Lord, to shear all his sheep depasturing within the Lords Mannor; and this is certain enough: although the Lord hath not alwayes a certain number of sheep, but sometimes a greater number, and somtimes a lesser; yet this incertainty being reduced to the Mannor which is certain, the Lord may distreyn for. And a distrefs is inseparably incident to every Service that may be reduced to certainty.

A man may not distreyn for Rent after the Lease is ended, nor out of the premises, except in some

some special cases ; nor in the night, unless it be *damage feasant*.

But the Executors or Administrators of him who had lands in Fee, or Fee-Tail, or for life, may either have an action of Debt against him that should pay it, or distreyn for it ; and so may the husband after the death of his wife, his Executors or Administrators, and he which hath Rent for anothers life, for the Arrerages after his death.

Noys Maxims p. 33.

A man puts Cattell into my pasture for a week, and afterwards I give him notice that I will keep them no longer, and he will not fetch them away ; I may then distreyn them *damage feasant*.

If a man take Cattell *damage feasant*, and as he is driving them to pound, they run into the yard or house of the man that owes them, and he refuses to let them out again ; he that distreyned

distreyned them may have a Writ of *Rescous* against the owner of the Beasts for so doing.

If a Landlord come to distreyn for Rent, and see the Cattel, and the Lessee or his servants drive them out of his Fee; he cannot have a writ of *Rescous*, because the Cattel were not in his possession: but he may follow after them, and distreyn them in another mans ground, it being for Rent, but not for *damage feasant*; for they must be taken *damage feasant*, that is, doing damages.

If a man distreyn goods, and declare not the cause or reason wherefore he doth it, if they be put in a house, the owner may break the house, and take them out.

Or if a man distreyn goods without cause, the owner may rescue them; but if they be pounded, he cannot break the pound and take them out, because

Co. 1. par.
Inst. f.
161

Claytons
Rep. p. 64.
pl. 111.

cause they are then in the custody of the Law.

But if he finde the pound-door unlockt, he may take them out.

Although there be a general prohibition in the Laws of *England*, that it shall not be lawfull for any man to enter upon the Free-hold or possession of another, without permission and Authority of the owner, or of the Law; yet this is not without exception.

Dr & St. 1.
1. c. 16. For if a man drive Beasts along the high-way, and the beasts run into any mans corn or grasse, and he that driveth them goeth after them into the grounds to fetch them out, he may justifie that entry into the grounds to fetch them out.

Dr & S. 1.
2. c. 9. If a man make a Feoffment and that in Fee by Indenture, reserving a Rent, he cannot distreyn for that Rent, unlesse a distres be expresly reserved;
And

And if the Feoffment be made without an Indenture reserving Rent, that reservation is voyd in the Law. And the like Law is, where a gift in Tail, or a Lease for term of life is made, the remainder over in Fee reserving a Rent, that reservation is voyd in the Law.

Also if a man seized of land *Ibid.* for term of life granteth away his whole estate reserving a rent, that reservation is voyd in the Law, without it be by Indenture: and if it be by Indenture, he shall not distreyn for the Rent, without a clause of distress be reserved.

Also for Amerciaments in a *Ibid.* *Leet*, the Lord may distreyn, although it be in the high-way; but for Amerciaments in a Court-Baron, he cannot distreyn; neither can he distreyn for an Amerciament in the *Leet*, in a place seized into the Kings hands for the Kings Debt. Also

Ibid.

Also if a man make a Lease at *Michaelmas*, for a year, reserving a Rent payable at the Feasts of the Annunciation of our *Lady*, and *St Michael* the Arch-Angel; in this case he may distreyn for the rent due at our *Lady-day*, but not for the Rent due at *Michaelmas*, because the time is expired.

But if a man make a Lease at the Feast of *Christmas*, for to endure to the Feast of *Christmas* next following, viz. for a year, reserving a Rent at the aforesaid Feasts of our *Lady-day* and *Michaelmas*; In this case he shall distreyn for both the Rents as long as the term continues, that is to say, till the aforesaid Feast of *Christmas*.

Dr & St.
ibid.

And if a man have lands for term of life of *J. N.* and makes a Lease for term of years, reserving a Rent, the Rent is behind, and *J. N.* dyeth; there he shall not distreyn, because his reversion is determined. And

And if a Town or Parish be Amerced, and the neighbours by Assent, Assesse a certain Sum upon every Inhabitant; And agree, that if it be not paid by such a day, that certain persons thereunto assign'd shall distreyn; in this case the distress is lawfull.

If there be Lord and Tenant, ^{Ibid.} and if the Tenant do hold of the Lord by Fealty and Rent, and the Lord doth grant away the Fealty, and reserve the Rent, and the Tenant Attorneth; In this case he that was Lord may not distreyn for the Rent, for it is become a Rent-Seck.

But if a man make a gift in Tail to another, reserving Fealty and certain Rent, and after that he granteth away the Fealty, reserving the Rent and the Reversion to himself; in this case he shall distreyn for the rent, for the grant of the Fealty is voyd; for the Fealty cannot be severed from the reversion. Also

Dr & St.

ibid. f. 75.

Also for Heriot-service the Lord may distreyn, but for Heriot-custome he cannot distreyn, but may Seize.

Also if a rent be assigned to make a partition or assignment of Dower Egall, he or she to whom that Rent is assigned may distreyn. And in all these cases aforesaid, where a man may distreyn, he may not distreyn in the night, but for *damage feasant*, that is, where he findes Beasts doing hurt in his ground, he may distreyn them night or day when he finds them; but for Wast, Reparations, Accompts, or for debts upon contracts, or such like, no man can lawfully distreyn.

C H A P.

C H A P. V.

Of Rescous, in what cases it may be Lawfull: of Replevins, how they are to be sued out; and of AVOV-ries to Declarations upon Replevins.

THe word or term *Rescous* Cook 1 par
is derived from an old Inst. 16c.

Norman verb Rescourrer,
which is in the Latine *recupera-*
re, that is, to take from, to get
again, or recover; So that *Rescue*
is as much as to say, to recover or
get again what another hath ta-
ken away.

And in the sense of the Law
Rescous is a taking away and
setting again at Liberty goods
distreyned, or the body of a
Person Arrested and in an Offi-
cers custody by vertue of legal
process.

G

fuch

Such kinds of *Rescous* as appertain unto our present subject are of distresses taken, in what cases it may be justifiable to *Rescue* goods or Cattel distreyned, and where not.

Co. l. 4.
f. 11.

If a Lord distreyn when there is no Rent due, the Tenant may make a *Rescue*, and hinder that distress.

1 par. inst.
f. 160.

In like manner if a Landlord come to distreyn, and the Tenant tender his Rent unto him, and the Lord will distreyn notwithstanding; in this case the Tenant may make *Rescous*.

Cook ibid.
Magna
charta. f.
25.

If Rent be in Arrear, and the Lord distreyn the Tenants Cattel in the high-way within his Fee; here also the Tenant may *Rescue* them, for no man may distreyn in the high-way, but the King and his Officers by special authority.

Ibid. f.
122.

In like manner if a Landlord distreyn *Averia caracæ*, goods of the

the Plough, where there is a sufficient distress to be taken besides; or if the Lord distreyn any thing that is not distreynable by common Law or Statute: in this case it is lawful for the Tenant to make *Rescue*.

Rastal tit.
distress 10.

But if a Lord come to distreyn Cattel which he seeth within his Fee, and the Tenant or any others to prevent the distress drive the Cattel away out of the Fee; the Lord may follow them with fresh Suit and distreyn the Cattel, and the Tenant cannot justify a *Rescous* of them, because in the Judgement of the Law the distress is taken within his Fee.

Hughs. gr.
abr. 1. part
p. 117. C.
21.

But if the Lord be coming to distreyn and, have not sight of the Cattel within his Fee, though the Tenant drive them off on purpose, or if the Cattel after the view go out of the Fee of their own accord, or if the Tenant af-

Co. 1. part
Inst. fo.
161.

ter the view removeth them for any other cause then to prevent the distress; then if the Lord distreyn them out of his Fee, the Tenant may justifie a *Rescue*.

Cook, *ibid*. If a man come to distreyn cattel *damage feasant*, and see the beasts in his ground, and the owner of the Cattel drives them out before the distress taken; the owner of the ground cannot follow and take them; for if he do, the owner of the Cattel may *Rescue* them, for they must be *damage feasant*, that is, doing hurt at the time of the distress taken; and the owner of the ground may bring his action of trespass.

Cook *ibid*. The Lord cannot break open any gate that is locked, nor break open any inclosure to take a distress; So that if a Tenant lock up his Gates, and inclose his ground, so that the Lord cannot come to distreyn: if the Rent be behind

behind, and the Lord have had actual possession, this is a disseisin.

For the ease and speedy remedy of the Country in case of distresses, where the Cattel be pounded, the Statute hath provided, that every Sheriffe, at his first County-day, or within two months after he first receives his Patent, is to depute and proclaim in his Shire-Town four Deputies to make Replevins within his County, which must reside within twelve miles one of another, on pain of five pounds a moneth for every moneth they are wanting.

So that when any mans goods are distreyned or impounded, he may repair to one of the Sheriffs Deputies for that purpose; and there he may have a Replevin (upon *Plegii de Retorn. habendum si &c.*) to cause the goods distreyned to be delivered to the owner.

G 3 There

There is likewise a Writ *de Replegiari facias* at the common Law, whereby the Sheriff is commanded, taking pledges of Prosecuting, to re-deliver the goods distreyned to the owner : but since the other is the readier and easier way, this Writ is out of fashion.

In a Replevin, he whose goods are distreyned or impounded becomes the Plaintiff, and declares against the other for unjustly taking and deteyning his goods or Cattel *contra vad. & pleg. &c.*

Rastal. tit.
distresses.
7.

If a Landlord distreyn, and carry the distress to hold, or out of the county, so that the Sheriff upon a *Replevin* cannot redeliver the goods, then upon the Sheriffs return of the *Replevin*, may have a Writ of *Withernam* directed to the Sheriff, to take as many of the Lords beasts, or as much goods in his keeping, till he have made deliverance of the first distress ;
and

and if the goods or cattel be conveyed to a Fort or Castle, the Sheriff may command the power of the County, and beat it down.

If a distress be made in a Franchise or Bailiwick, the Sheriff is to direct his Replevin to the Bailiff thereof to deliver them upon Pledges, &c.

The Plaintiff in the Replevin ^{Property,} ought to have the property of the goods in him at the time of the distress made; for if the defendant claim property, the Sheriff cannot Replevie the distress, but the property must be tried by Writ.

So that if the defendant claim property in the goods distreyned, then must the plaintiff in the Replevin have a Writ *de Proprietate probanda*, directed to the Sheriff to try the property; and if the Jury finde for the plaintiff, then the Sheriff must make deliverance of the distress: and if it

Co. 1. part.
Inst. f. 145,

pass for the defendant, the Sheriff can proceed no further unless the plaintiff bring writ of *Replegiari facias* directed to the Sheriff; and then though he do return the property, yet it shall proceed to tryal in the Common-Pleas upon the issue of the property.

The defendant in a Replevin, that is, he that made the distress, may if he see cause bring a Writ of *Recordare*, and so remove the plaint upon the Replevin, out of Sheriffs County-Court into the Common-pleas; and if the plaintiff declare not, he may have a *Retorn. habend.* And then if he declare not, a writ to enquire of damages.

If a man by his Deed grant a Rent with a clause of distress, and grant further that he shall keep the goods distreined against sureties and pledges, till the rent be paid, this grant is not good, but the Sheriff may Replevie the goods

goods distreyned notwithstanding : for if such a distress should be irrepleviabie, the current of Replevins should be stopped, to the great damage of the Subject.

If the goods or Cattel of several men be distreyned, they cannot joyn in a Replevin, but every man must have a several Replevin: for in a Replevin it is a good Plea to say, the property is to the Plaintiff and to a stranger; and where there be two Plaintiffs, that the property is to one of them. Co. 1. part 7
Inst. fol. 45.

If a Lord distreyn his Tenant wrongfully, although the Cattel be come back again to the owner; yet the Tenant may have a Replevin against the Lord, because he cannot have an Action of trespass against him.

The Plaintiff in a Replevin ought to be careful in giving his instructions for it, for it must be certain in setting down the num-

ber and kinds of the cattel which are distreyned, otherwise the Replevin is not good.

Avowry.

The *Avowant* is the defendant in a Replevin, that is, he that made the distress; and when he justifies in his Plea for what cause he distreyned, that Plea is called his *Avowry*.

As if a Landlord distreynes for Rent in Arrear, and the Tenant or owner of the cattel brings a Replevin, and declares against him for unjustly taking and deteyning his Cattel, and the defendant justifies he took it in his own right, and so shewing the cause of the taking in his Plea; this is an *Avowry*.

But if the defendant took the distress for or in the right of another, then when he hath shewed the cause in his Plea, he must make *Confessance* or acknowledgement of the taking the distress, as being Bailiff or servant unto him

in

in whose right he took it.

There are four manner of ^{Co. l. 9. f.} Avowryes which a Lord may ^{135. 136.} make upon a Replevin.

1. Avowry upon his very Tenant.

2. Upon his very Tenant by the Mannor where the Tenant had but a particular estate.

3. Upon his Tenant by the Mannor where the Lord had but a particular estate : and these three are Avowryes at the common Law.

4. The Lord may Avow up-^{21. H. 8.} on the matter in the land as ^{C. 19.} within his Fee : this is provided by the Statute 21. H. 8. C. 19. & is the safest way for the benefit of the Lords ; for by this Statute, a Lord may Avow the taking a distress, as in lands holden of him within his Fee, without naming of any person in certain ; which by the Common Law they could not do, but were there-

thereby compelled to Avow upon a person in certain, which often proved much to their damage and prejudice: for by the secret Fines, Recoveries, Grants, and Conveyances, which the Tenants used purposely to frame to defraud their Lords, they were ignorant upon whom to make their legal Avowry; which inconvenience the forementioned Statute hath prevented.

Now in an Avowry upon this Statute, the Plaintiff in the Replevin, be he Tenant for years or otherwise, may have every sufficient answer and aid, and every other advantage in the Law to the Avowry: Disclaims only excepted; for because the Avowry is made upon no certain person, he cannot disclaim.

Co. barr.
Inst. f. 266.

If a Tenant hath rent behind for divers years, and makes a Feoffment in Fee, and the Lord accept the Rent or Service of the Feoffee

Feoffee due in his time, he shall loose the Arrerages of his Rent due in the time of the Feoffor. For after such acceptance, the Lord cannot Avow upon the Feoffer, nor upon the Feoffee, for the Arrerages due in the time of the Feoffor; but if the Feoffor dyeth, although the Lord accept the Rent or Service by the hands of the Feoffee due in his time, yet he shall not loose the Arrerages, because he is now by the Law compelled to Avow upon the Feoffee; and what the Law enjoyns him to, shall not be prejudicial unto him.

If the Plaintiff in a Replevin be non-suit, or otherwise by Avowry barred or overthrown; then the defendant or Avowant shall recover costs and damages against the Plaintiff, as the Plaintiff should have done or had, if he had recovered in the Replevin against the Avowant.

C H A P.

C H A P. VI.

In what cases a Tenant or other shall be said to commit waſt in Houſes, Gardens, Woods, Paſtures, Orchards, &c. and what Waſt ſhall be puniſhable, and what not.

IT concerns every Tenant, of what nature ſoever his Tenure be, to be very careful herein: for he may in committing waſt ſoon become obnoxious to the Law, and incur great damage.

I ſhall therefore by way of caution ſhew you in what caſes a Tenant may commit Waſt, ſo as to render himſelf lyable to loſſe and puniſhment; and then how far a Tenant may act upon his Tenure, and not commit any puniſhable Waſt.

Cook
1 part Inſt.
f. 53.

It a Tenant for life or years,
or

or in Dower, do pull down any of the Houses or Tenements, or suffer them to be uncovered, to the rotting or destroying of the timber or materials of the house, this is Wast.

So likewise if glasse-windows be broken down or carried away it is Wast, though the Tenant glazed them himself: for the glasse is part of the house. It is also Wast to take away Wainscot, if it be fixed to the Walls or Posts of the House.

It is likewise Wast to take away Doors or Windows, or any thing annexed or fixed to the freehold, although the Tenant fixed them there himself.

If a Tenant build a new house where none was before, it is Wast: and if he suffer it to be Wasted, it is a new Wast.

The pulling down of a Stone-wall or Mud-wall of a house is Wast.

Cook ibid.

If a Tenant of a Park, Warren, Dove-house, or the like, do not leave such sufficient store as he found when he entred, it is VVast; and so it is to suffer a Park-pale to decay, whereby the Deer are lost or dispersed.

Co. 1 part. If a Tenant suffer the houses
In st. f. 53. to be Wasted, and then sell Timber to repair them, this is a double VVast.

VVast is properly in Houses, Gardens, and Timber-Trees, that is, Oak, Ash and Elme, which are counted Timber generally in all places, except in some Coppy-holds Elm is not.

Now these Timber-trees are said to be VVasted either by cutting them down, lopping or topping them, or any other wayes decaying the Timber.

Idem.

And in some countries where Timber is scarce, Beech is accounted Timber, or other Trees used for building Houses; and there

there the cutting of them is VVast.

Or if a Tenant suffer the young *Germens* of trees to be destroyed, this is destruction, and punishable in VVast.

To cut down any trees, as Willows, Birch, or the like, which stand and grow in the defence and within view of the dwelling house, is VVast.

It is VVast to cut down Hazels which grow not under the great trees, but in a quarter of the Wood by themselves.

If a Tenant grub up or destroy Co. 1 par. Inst. f, 53. a quick fence of white-thorn, it is VVast.

Burning of a house by negligence or mischance is VVast.

Where is a Wood, and nothing growing there but underwood, the Tenant cannot cut all: but if it be a Wood where great trees grow amongst the underwood, there he may cut all the underwood. It

It is Waste to cut apple-trees if they bear fruit, though they lye along the ground.

It is also Waste to cut Damfin-trees or any fruit-trees growing in a garden or orchard.

To dig for Gravel, Chalke, Clay, Brick, Earth or Stones, or the like, is Waste; and so it is if a Tenant dig for any Mynes which were not open at the time of the Lease made.

To suffer a bank or Wall of the Sea to be in decay, so that by the Flux and Reflux of Sea, the Marsh is overflown so that it becomes unprofitable, is VVaste.

But if the Sea break in suddenly by a violent tempest, it is no VVaste.

It is VVaste also if a Tenant suffer the banks of any River or VVater to decay, whereby the ground is surrounded, or becomes unprofitable: so it is to suffer pasture-ground to be surrounded
fo

so as it becomes Rushy ; or Arable land, so that it becomes rough clay.

It is waste for any Tenant to convert Arable into VWood, or Meadow into Arable.

The punishment in VVaste is treble damages, and forfeiture of the place VVasted.

There is voluntary or actual VVaste, and permissive VVaste.

An action of VVaste lyeth against a Tenant by the courtesie, Tenant for life or years, half a year, or Tenant in Dower, by him that hath the estate of Inheritance, in any of all these cases before mentioned.

But VVaste doth not lye against a Guardian in Soccage, but an Action of Accompt or trespassse.

Neither doth Waste lye against a Tenant by *Elegit*, Statute-Merchant or the Staple ; but an Action of Accompt after the
Debt

Co. 1 part. Debt and damages levyed:
Inst. 54.

Waste doth not lye against a Tenant at will : but if such Tenant voluntarily pull down houses, or cut down Timber-trees or the like ; in this case the Lord may have an action of trespasse against him.

Noy. Max.
P. 33.

But against a Tenant in Mortgage, either an action of Waste or an accompt will lye against him, because his estate is conditional.

If two or more Joynt-Tenants or Tenants in common be in a house, and one will repair the house, and the other will not ; in that case he that will repair it may have a writ *de Reparatione faciend.*

If a Landlord covenant to repair the house, and doth it not, in this case the Lessee may cut timber growing upon the ground and repair it, though he be not compellable thereunto, and

and shall not be punishable in Waste for so doing.

No man can have an action ^{Cook.} of waste unless he have the im- ^{1. part Inst} mediate estate of inheritance; ^{P. 53.} but sometime another shall joyn with him.

As if a Reversion be granted to two, and the Heirs of the one, they two shall joyn in an action of waste.

In like manner the Surviving *Copartners* and the Tenant by the courtesie shall joyn in an action of waste.

If a Tenant for years commit Waste and dye, no action of Waste lyeth against his Executors or Administrators for waste done before their time.

If there be two *Copartners* of a Reversion, and one of them dye, the Aunt and Neece shall joyn in an Action of waste.

If a Tenant for life commit waste, and after surrender his estate

state, and the Lessor accepts it; the Lessee is then discharged of the Waste.

Kirchin f.
244.

If a stranger commit Waste upon the lands which one holdeth for life or years, the Tenant shall suffer for it, and is left to take his remedy over against he that did it.

If a Landlord covenant to deliver timber out of the same land to repair the house let, and will not deliver it, and for defect thereof the Tenant will not repair it, but suffers the house to fall down; this is waste in the Tenant, and he is punishable for it.

But if the timber be to be taken out of other lands, and be not delivered, then the Tenant is excusable if he suffer the house to fall, and no action of waste lies against him.

Idem.

If a single woman Rent lands and marryes, and her husband commits waste and dyes, she shall

shall be punished for this waste done by her husband.

But if a Lease be made to a man and his wife, and the husband commits waste and dyes; in this case the wife shall not be punished for such waste, unless she agree to the estate.

If a woman be Tenant for her ^{Cook.} life, and marries, and her husband commits waste, and the wife ^{1. part. Inst.} dyeth, the man is not punishable ^{54.} for this waste: but if a woman be possessed of a term of years, and takes a husband who commits waste, and the wife dyes; here the man is liable to an action of waste for the waste by him committed, because he enjoyeth the term of the Lease.

If a man make a Lease for life or years, and after grants the Reversion, for years, the Lessor shall have no action of waste during the years; for he himself hath granted away the Reversion in respect

respect whereof he is to mainteyn his action.

If an action of wast be brought, and the Term end while it is depending, yet the writ shall not abate: for although the Plain-tiffe cannot recover the place wasted, yet he shall recover the treble damages.

Co. 1. part.
Inst. f.
285.

Likewise if one be Tenant for term of anothers life, and makes waste, and afterwards the *Cestui que vie* dyes, here the Lessor shall recover treble damages, but cannot recover the place wasted, for that falls to him by the death of the *Cestui que vie*.

Cook.
1 part. Inst.
f. 54.

If waste be done in one corner of a Wood, that place only which is wasted shall be recovered: but if it be done here and there about the wood, then the whole wood shall be recovered, or as much wherein the waste *spar sim* is done.

Idem.

And so in Houses, so many Rooms

Rooms shall be recovered where-
in there is waste done.

If a man make waste, in cut-
ting trees which grow in hedge-
rowes, which inclose pastures,
nothing shall be recovered but
the place wasted, that is, the cir-
cuit of the roots, and not the
whole pasture; but if trees grow
scatteringly about the pasture,
then the whole pasture is forfeit-
ed if they be cut.

Regist.
pract. p.
343.

It is good plea in bar to a
writ of Waste, to say that the
house fell by a sudden tempest,
although the Tenant did cove-
nant to repair it; but it is no plea
in an action of covenant.

It is also a good plea in a writ
of Waste, to say that the house
was Ruinous at the time of the
Lease making, and the Timber so
putrified and Rotten that it fell.

It is also a good plea to say,
that the plaintiffe hath entred
upon the land, before which en-
try

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try no Waste was made; or that he Surrendred, and the plaintiff did accept; before which time no waste was made.

Co. 1. part.
Inst. f.
285.

If a Tenant doth waste, and afterward Surrenders, and the Lessor agrees, yet the Lessor may have an action of waste, and recover treble damages.

If an action of waste be brought by husband and wife in remainder in special tail, and the wife dyeth (the suit depending) without issue; in this case the writ of waste shall abate.

Idem f.
220.

If a Lease be made to hold to one without any impeachment of waste, then the Tenant may cut down trees, and convert them to his own use: but if the words be to hold without impeachment for any action of waste; in this case if the Lessee cut down trees, the Lessor shall have them.

Co. 1. part
inst. 233.
234.

If a Tenant for life grant a rent-charge, and after doth waste,
and

and the Lessor recover in an action of waste, he shall hold the land charged during the life of the Tenant for life; but if the rent were granted after the waste done, the Lessor shall then avoid the grant made by the Lessee for life.

If a Tenant in Fee release to ^{Idem} his Tenant for life all his right, ^{f. 345.} yet he shall have an action of waste.

And if a Tenant in Tail make a Lease for his own life, yet he shall have an action of waste.

But if there be a Tenant for life, the remainder to another in Tail, and he in the remainder release to the Tenant for life all his right and State in the land; he cannot afterwards have an action for waste.

If the Grantee of a Reversion bring an action of waste, the Lessee may plead generally that he hath nothing in the reversion.

If a Lessee before his term begin enter into the lands let to him, and do an act which amounteth unto waste, the Lessor shall not have an action of waste for the same.

None shall have judgement to recover in an action of waste, where the waste comes but to 12 *d.* or such a small sum.

Co. 2 part
Inst. f.
303.

If waste be done upon lands let for term of years, or life, by one against whom the Lessee can have no remedy in Law for committing the same waste, the Lessee in such case is not punishable for the same by the Lessor, except there be a special covenant in the Lease that he shall not permit nor suffer waste to be done.

If the house be uncovered when the Tenant cometh in, it is no waste to the Tenant if he suffer it to fall down.

The raising of a new frame of a house which was never covered,

red, is no waste. If a house fall by sudden tempest, or be burnt by lightning, or destroyed by enemies, or the like, without any default of the Tenant, or was Ruinous at his coming in, and fall down, this is no waste.

And the Tenant may build the same again with such materials as remain, and with other Timber growing upon the ground; but he must not make the house any larger then it was, for if he do it is waste.

If a Tenant fix a Furnace, and not to the Walls nor Posts of the House, if he take it away within his term it is no waste.

If a Tenant in Fee fix a Furnace in the middle of the house, the heir shall have it and not the Executors.

If a house fall by a great wind or tempest, the Lessor shall have the Timber, for it is no waste, and the Lessee is not bound to build it up again.

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**The Parish-Law touching
the Poor and Bastardy,
&c.**

C H A P. VII.

Of putting out poor Children apprentices.

43 El. C.
2.

BY the Statute of 43 *Elizabeth*, cap. 2. the Churchwardens and Overseers of the Parish shall put out children to be Apprentices ; and such as are fit must receive Apprentices ; and the putting out of poor children to be Apprentices is one of the best ways for providing for the poor.

It is also left to the discretion of the Churchwardens and Overseers.

verseers, all Circumstances of age and ability being considered, to agree with the party who is to take such an Apprentice, about the giving of money with him; and if they cannot agree with the party, then the Justices of Peace neere adjoyning, or in their default the Sessions of the Peace must determine these controversies.

Every man using Husbandry, Cloathing, Grasing or the like, who by his calling or Profession entertaines and must have the use of other servants of the like quality, must entertain such Apprentices; wherein discretion must be used, circumstances duly considered.

If the proper Parish be not able to provide for the poor children of the same Parish, the Justices may provide Masters for them in other Parishes within the same Hundred: if the same

One parish must assist another.

H 4 hundred

Hundred be not able, then out of that Hundred in the rest of the County.

If any parishioner refuse to take such a poor child an Apprentice, he is to be bound over to the next Sessions or Assizes; and if he refuse to finde Sureties for his appearance, he is to be sent to the Gaol, there to remain till he gives Sureties for his appearance.

And if at the Sessions or Assizes such an one refuseth to take an Apprentice, and his excuse be not allowed, he may be bound to the good behaviour; and if he refuse to be bound to the good behaviour, to be imprisoned until he will. He may also be indicted for his contempt, and thereupon fined and imprisoned; or he may be bound with good Sureties to appear at the Council-board.

If the Parents of such poor children refuse to suffer their child-

children to be bound Apprentices, or being bound do entice them away, themselves not being able to maintain them, they are to be committed to the house of correction.

If a party upon an indictment Penal Laws mitigated. be convicted or confess the crime, it is not in the power of the Court to mitigate the Fine, in such cases where the Statute makes it certain; but if the party indicted protesting his innocence, yet *quia noluit placitare cum Domino Rege*, puts himself upon the grace of the Court, here the Court may impose a moderate Fine, and order to forbear the prosecution.

After conviction, where the Statute doth appoint the measure of the punishment, the Justices have no power of mitigation of it.

If a woman unmarried be hired from week to week, or from Bastardy. half-

half-year to half-year in one Parish, and there be gotten with child, and then goeth from thence into another Parish, where she is settled in service for two or three months, and is then discovered to be with child; the Parish wherein she was last lawfully settled must keep the child, and not the Parish where she was begotten with child.

But if a woman-servant unmarried be gotten with child, and goeth out of her service before or after she is discovered to be with child, and the reputed Father be run away, or is not able to free the Parish, a question hath been whether the Master may be enforced to provide for her till she be delivered and for a month after.

If the Master of such a servant hath legally discharged his house of her, he is no more bound to provide for her then any other.

If

If a woman being with child procure her self to be reteyned with a Master who knoweth nothing thereof; it is a good cause to discharge her from his service: and if she be gotten with child during her service, it is all one; but the Master in neither case must turn away such a servant upon his own authority. But if her term be ended, or she lawfully discharged, the Master is not bound to provide for her, but it is a misfortune fallen upon the Parish, which they must bear, as in other cases of casual impotency.

The Bastard must be placed with the Mother, so long as it is within the quality or condition of a Nurse-child, which shall be till seven years of age; and then it is fit to be sent to the place of it's birth to be provided for, the Mother or reputed Father not being able; and the Parish where the child is born shall not be forced, Placing Bastards,

ced to contribute to the charge, as long as the Mother lives, and the child be under seven years of age.

3. Car. I.
c. 13.

If one be convicted for driving of Cartel on the Sunday through several Parishes, though the Statute say he shall forfeit twenty shillings for every such offence, yet if he drive through several Parishes, the forfeiture is but of one twenty shillings for one Sabbath day: therefore where the action is first attached, and the distress first taken, that Parish shall have the benefit of the forfeiture, and not the other.

Of servants

Such Persons as are out of service, and have not visible meanes of their own to maintain themselves without their labour, and do refuse to serve as an hired servant by the year, may be bound over to the next Sessions or Assizes, and to be of the good behaviour in the mean time; or
may

may be sent to the house of correction.

The land within each Parish is to be taxed to the charges for the relieve of the Poor in the first place equally and indifferently; but there may be an addition for the personal visible ability of the Parishioner within that Parish according to good discretion; wherein if any difference or mistake arise, the Justice or Sessions must decide it.

Stat. 43.

Eliz.

Taxing for the poor.

All things that are reall, and a yearly Revenue, must be taxed to the poor.

The Statute gives direction for the tax for the Gaol, County Stock, and house of correction.

Stat. 14

Eliz c. 43.

Rates must be made in every Parish for the relieving of Constables and Tythingmen, for defraying their charges in conveying of Rogues from Parish to Parish, and in relieving Cripples, and such like expences.

If

If a man or woman having an house or habitation in one Parish be thrust out, this is an illegal unsettling which the Law forbids, for none must be enforced, to turn vagrant, and such a one must be returned to the place where he or she was last lawfully settled, and the child also born in the time of this distraction.

If a poor child of one Parish be put out according to the Statute to a Master in another parish, if his Master dye and leave no Executor nor Administrator fit to keep an Apprentice, or able to place him, he must be provided for in the Parish where he is an Apprentice; for servants and Apprentices are by Law settled in that Parish; and if they become impotent there, the Parish must abide the adventure, after their term or time of service be lawfully ended.

Every one who is settled as a
Native

Native Householder, Sojourner, Apprentice, or servant, for a month at the least, without a just complaint made to remove him or her, shall be held to be settled in Law.

If a Rogue be taken at *C.* and will not confess the place of his birth, neither doth it appear otherwise, but that he confesseth the last place of his habitation to be at *S.* hereupon he is whipped and sent to *S.* At his coming to *S.* the place of his habitation is there known to some to be at *W.* and thereupon the Rogue confesseth it to be so: In this case such a Rogue ought to be sent to the place of his birth; for this is but a mistaking, and no legal settling.

If a Constable be chosen, and refuse to take his Oath, this is a contempt for which he may be fined and imprisoned.

If a Constable dye, or remove
out

out of the Parish where he is chosen, his place is to be supplied by the Lord of the *Leet*, if that time fall neer, otherwise by the Sessions; or if that be too far off, then by the next Justices.

If a poor weak man be chosen a Constable or Tythingman, who is unfit for the place, the Justices of the Peace must remove him and put a fit man in his Room.

And if a Lord of a *Leet* have power to chuse a Constable or Tythingman, and perform it so ill, it is a just cause to seize his liberty.

Nurse-children, Scholars at Grammar-Schools or at the University, or Persons sent to the common Goal, Hospital or Houses of Correction, are not to be esteemed as Persons to be settled there, no more than Travelers in their Innes: but their settling is where their Parents

rents are settled: and children born in the common Goals and houses of correction, their parents being prisoners, are to be maintained at the charge of the county.

The Parson or Vicar of every Parish shall according to the reasonable value of his Tythes and Parsonage, bear to the Taxation for the poor of the Parish.

If a Parishioner or owner within a Parish do bring into the Parish without their consent a stranger, who becomes burdensome to the Parish; they may ease themselves by taxing such a one to the charge of the Rates of the poor, not only having respect to his ability or the land he occupies, but according to the damage and danger he bringeth to the Parish by his folly.

For Warding in the day-time for the apprehending of Rogues,
it

it is at the discretion of the Constables, or direction of the Justices, to vary according as they see occasion requires.

If a man procures himself to be sworn the Kings servant extraordinary, by that means to excuse himself from bearing Office in his Country, this shall not excuse him; but a servant extraordinary may well perform his ordinary service in the Country according to his quality.

CHAP.

CHAP. VIII.

Of making and confirming Rates.

THere oftentimes falls out much variance and difference amongst Parishioners about making their rates and assessing one another : for the prevention whereof, they ought to have all their rates approved and confirmed, under the Hands and Seales of the two next Justices of the Peace ; who are to allow and approve of the rates of Constables and such like Officers of Parishes, with the Church-Wardens, Overseers and Inhabitants of the place, for the discharge of the Constable or the Tithingman for the charge he hath been at in the reliefe and convey of Rogues and others with passes, or to the house of
cor-

correction. And the Justices are to give warrant under their Hands and Seals, to levy the rates so by them confirmed and approved of, by distress and sale of goods of such as refuse to pay their proportion rated on them.

14. Car. 2.

The Justices in their general or special Sessions may rate the Wages of Spinsters, Laborers, Weavers, and Workmen, within any particular division, and they are to be prosecuted as if they were at the publick Sessions.

5. Eliz. 4.

1. Jac. 6.

If a small Parish, or any Parish be overburdened with poor, so that they are unable themselves to mainteyne their poor, the adjacent Parishes within the Hundred, or the whole Hundred is to be rated to their assistance, which rate must be allowed by the Justices, and there must be two Justices, one of the *Quorum* to give warrant to levy the rate

Justices set upon any Persons of other
their Parishes within the Hundred. 43. Eliz. 2.

rates So for a rate set upon an Hun-
dred for the reliefe of poor Soul-
diers or Mariners come from sea,
that do want work or reliefe.
And the Justices in Sessions may
rate the whole county for the
relief of Souldiers and Mariners,
and cause it to be levyed and im-
ployed for the use and reliefe of 39. Eliz.
Souldiers and Mariners. 7. & 4. El.
3.

To convey a prisoner to the
Goal, where he hath not
goods to be sold to bear the 3. Jac. 10.
charge of it, the Constables and
poor Church-wardens, and two or
three others of the Parish; or
for want of such Officers, four
able men of the place where he
was taken, may make a rate for
the same: and any one Justice of the
peace may confirm it under his
hand, and give his warrant to le-
vy it by distress and sale of goods,
and return the overplus, it being
praised

praised by four Inhabitants, and so to pay over the money to him that did bear the charge of conveying the prisoner.

14 car. 2.

So for the repaire of the High-ways, where the ordinary six dayes work will not do it, so it exceed not six pence a pound in the Parish, through the whole year, any one Justice may allow of and signe the rates made by the Surveyors of the High-ways, with three or four substantial men of the Parish.

27 Eliz.
13.

Where a Hundred, upon a Robbery done is chargeable for the money lost, and a suit brought by the party who is Robbed, and default found by the Hundred in the prosecution of the Felon, and the one half of that money is recoverable upon that Hundred by the party Robbed, in the name of the Clerk of the peace of the County. And where damages are recovered against one of the

some

and some few Inhabitants of the Hundred, and the rest refuse to contribute thereunto; any two Justices (whereof one must be of the *Quorum*,) living near the place, may rate every place within the Hundred, for the levy-
ing of it. And according to this rate the Constables of every place *ex Officio* are to tax the Inha-
bitants of the place, and to levy the money and pay it to one of the Justices.

Any two Justices may rate the parts adjacent for the relieve ^{1. Jac. Cap. 31.} of a place Infected with the ^{21 Jac. Cap. 28.} *Plague*; and by warrant under their Hands and Seals, to cause the same to be levied by distress and sale of goods, or by Imprisonment in case no distress can be found, until the party refusing pays it. ^{43. Eliz. Cap. 3.}
In case of default by Parishio-
ners and Constables for the rate
one of the Justices for the relieve
of

of Mariners and maimed Souldiers, any one Justice of Peace may give warrant to levy it.

43. Eliz.
2.

If Parishioners, and the Constables and Church-wardens thereof cannot agree in the distribution of the rates of the Justices for the Kings Bench and Marshalsey, &c. any one Justice living near the place may confirm the rate; and if then they neglect to pay it, any one Justice may give warrant to levy it by distress and sale of goods, and where no sufficient distress can be found, to send the party refusing to pay to prison till he pay it.

5. Eliz.
cap. 13.
18. Eliz.
cap. 9.

For the repairing or amending of a bridge, or the High-way within three hundred foot of it, four Justices of the peace, whereof one must be of the *Quorum* may enjoin the County to do it, and for that purpose, may set a rate upon every man, which the

ouldi and the Constables, and two of
Peace the Inhabitants in every Parish,
it. and not otherwise, must make in
Con- parchment in every Hundred,
ardens under the Justices Seals, and
he di- then to deliver it to the Colle-
the Ju- ctors, whom they are to appoint
ch and to levy it.

ne Ju- As for other rates, they are ^{14 Eliz. 5th}
ce may to be made in the Sessions, as the ^{43. Eliz.}
f ther rate for relief of prisoners in the ^{2nd 3rd}
ny one Goal, and for the Kings Bench
to levy and Marshery, and Mariners and
goods maymed Souldiers; which must
distres be yearly at the Sessions next af-
e parry ter Easter.

son till The Justices of the peace are al- ^{14 Eliz. 5th}
to yearly at one of their Sessions, ^{1 Jac. 25.}
amend to make a rate upon the County
gh-wa for the relief of the prisoners in
or of the common Goal of the county.
where And this rate is not to be above
Quorum six pence or eight pence per week
to do in a parish for a year, which the
may set Church-wardens are to levy, and
which the pay it quarterly to the high Con-
and stable,

stable ; (or if it be in a Corporation, to the Head-Officer) and he is to pay the same to the Collectors thereof who the Justices appoint, and they are to distribute it weekly to the prisoners, upon pain of five pounds for any of these Officers failing of his duty in this case.

3. Jac. 10. Every offender that is to be carried to the Gaol, is to bear his own charge, and the charges of those that attend or conduct him; which if he refuse, one Justice may send his warrant to the place where he hath goods, to sell so much thereof as to satisfy the charge, by appraisement of the Neighbours, returning the overplus : and if he have no goods, the Constables and Church-wardens, and two or three others of the parish ; or for want of such officers, four of the chief Inhabitants of the Parish where he is taken, may make a rate for

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the charge of his conduct to prison; which being allowed under the Hand of the Justice of the peace, is to be paid: and if any man refuse the payment of it, the Justice may send his warrant to the Constable, Tithingman, or other Officer, and give him power to levy it by distress and sale of goods, after appraisement, rendring back the overplus if any be.

C H A P. IX.

Of Masters, Servants, Laborers, Artificers and Apprentices.

V Workmen, Laborers or Artificers that shall 2. & 3. E. 6. 15. conspire together about their wages, for the first offence forfeit ten pound to be paid within six weeks after conviction, or else to suffer twenty days imprisonment

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ment with bread and water : for the second offence twenty pound; and that not paid in six dayes, to suffer the Pillory : for the third offence forty pound ; and that not paid in the same time, to suffer the Pillory again, loose one of his ears, and be for ever after taken as one infamous and not to be credited.

5 Eliz. 4.

None shall hire or be hired for less then a year, in the Arts of Clothier, Woollen-Weaver, Tucker, Fuller, Clothworker, Sheerman, Dyer, Hosier, Tailor, Shoemaker, Tanner, Pewterer, Baker, Brewer, Glover, Cutler, Smith, Farrier, Sadler, Spurrier, Turner, Cooper, Hatter or Felt-maker, Fletcher, Butcher, Cook, Miller, &c.

Penalty for
refusing to
serve.

Every person unmarried, or under the age of thirty years (though married,) having been brought up in any of the said Arts, by the space of three years

and not worth in lands forty shillings *per annum*, or in goods ten pound, not already reteyned in Husbandry, the Arts afore-said, or any other Art, or in any service (upon request of any person using the same Art) shall not refuse to serve for the Wages limited by the Statute : and being so reteyned, shall not depart from his or their service, without ^{Departing without} one quarters warning, before two ^{cause.} lawful Witnesses, or some lawful cause to be proved before one Justice of the peace, or Head-Officer, on pain of imprisonment without bayle; But upon submission to perform the Service, to be set at liberty without Fees.

None shall put away his servant before the end of his term, without a quarters warning, or some lawful cause to be proved by ^{Putting away a servant during his time.} two Witnesses, before the Justices of Oyer and Terminer, Affize, peace in Sessions, a Head-Officer, ^{Idem.}

or two discreet Aldermen or Burgesſes, on pain of forty ſhillings.

*Times of
work.*

Idem.

Thoſe that work by the day, ſhall continue at work, betwixt the middle of *March* and the middle of *September*, from five in the morning till between ſeven and eight at night, except two hours allowed for Breakfast, Dinner, and Drinking, and half an hour for ſleeping : from the miſt of *May* till the miſt of *August*, and all the reſt of the year, from twilight to twilight, except an hour and an half allowed for Breakfast and Dinner, on pain to have one penny abated out of their Wages for every hours abſence.

*working by
great.*

Thoſe who take work by *Great*, ſhall not leave the ſame before it be quite finiſhed, except for non-payment of his Wages, the Kings Service, Liſenſe of the Work-Maſter, or other lawful cauſe, on pain to ſuffer one months imprisonment without Baile

Baile, and to forfeit five pound to the party grieved, besides his costs and damages to be recovered at the common Law for the loss sustained.

None reteyned in Service to work, shall depart without License, on pain of one months imprisonment.

Departing out of service without License

If any servant or other shall be convicted before two Justices of the peace, or a chief Officer as *Servants abusing the Masters, &c.* **aforsaid**, by his own confession, or Testimony of two honest men, to have assaulted his Master, Mistress, Dame or Overseer, he shall suffer one years imprisonment or less at the discretion of the Justice: and if the party offending shall be thought to deserve a more severe punishment, then to receive such open punishment, (life and member excepted) as the Justices in sessions, or the chief Officer, and four of the discreetest men in the Corporation shall think convenient. I 4 Ar.

Laborers in
Harvest.

Artificers shall work in *Hay-time* and *Harvest*, on pain of imprisonment in the Stocks two days and one night, which the Constable shall inflict upon them on pain of forty shillings.

Harvest.
men.

It shall be lawfull for Laborers not retained to go into other Shires, to work in *Hay-time* and *Harvest*, so they bring with them a Testimonial under the hand of one Justice or a chief Officer, Testifying that they have not sufficient work in that place where they lived the Winter before; for which Testimonial they shall pay a penny.

Single wo-
men to
serve.

Every unmarried woman (fit to serve) above twelve years of age, and under forty, shall by two Justices, a chief Officer, or two Burgeses, be compellable to serve for convenient time and Wages, on pain of imprisonment.

Apprentices
o Hus-
andry.

Husbandmen being householders, and using half a Plow-land

(at

(at least) in tillage, may take by Indenture Apprentices above the age of ten years, and under eighteen, to serve in Husbandry till the age of twenty one at least, or twenty four, as the parties can agree.

Every Householder of the age of twenty three years, dwelling in a Town corporate, and using there any Art or Mystery, shall and may take an Apprentice for seven years at least; and the term ought not to expire before the Apprentice accomplish the age of 24 years; and Smiths, Wheelwrights, Plow-wrights, Millwrights, Rough-masons, Carpenters, Plaisterers, Sawyers, Lime-Burners, Brickmakers, Bricklayers, Weavers, Turners, Coopers, Millers, &c. may take Apprentices, where their Parent have no land.

what Apprentices may be taken.

None who hath not served an Apprentice seven years, in any

Is

Art

Art or Myſtery, ſhall uſe the ſame
or ſet any other to work therein
on pain to forfeit forty ſhillings
for every month offending herein
one moyety of which forfeiture
ſhall be to the King, and the other
moyety to him that will ſue for
the ſame, in any Court of Re-
cord, &c.

*Prentices
refuſing to
ſerve.*

If any Perſon fit to make an
Apprentice reſuſe to ſerve, upon
demand, one Juſtice of Peace,
Maſtor, or Head-Officer, to whom
complaint hereof ſhall be made,
hath power to commit him to
prifon till he be willing to ſerve.

*Difference
between the
Maſter
and ſer-
vant.*

If there ſhall ariſe any diſfe-
rence between the Maſter and the
Apprentice, one Juſtice of the
Peace, Maſtor or Head-Officer
in any Corporation or Market
Town, ſhall have power to re-
concile them, if they can; if not
to bind over the Maſter to the
next Quarter-Sessions, where
the Juſtices of the Peace, or any
four

four of them, (one whereof is to be of the *Quorum*) or the Maïor or Head-Officer, with the consent of three of his Brethren, shall upon default found in the Master, in writing under their Hands and Seals discharge the Apprentice of his Service; and if default be found in the Apprentice, to inflict such punishment as in their discretion shall be thought fit.

When an Apprentice departs from his Masters service, into another County or Corporation, it shall be lawful for the Justice or Head-Officer there, (being Justices of the Peace) to direct a *Capias* to the Sheriff or other chief Officer for his apprehension; and being taken, to commit him to Ward till he give good security that he will honestly serve out his time.

Churchwardens and Overseers of the poor in every Parish are to place out Apprentices the chil-

Apprentice that run from their Masters.

Co: 2. Inst. 737.

children of such Parents as they judge unable to bear the charge of them; and they to whom they are so placed must receive them: they may bind to any Handicraft-trade as well as Husbandry and Houſwifry, any that are above seven, and under fourteen years of age: and they may bind the Male-child till he be twenty four years old, and the Female till ſhe be twenty one years old or be married, which ſhall firſt happen.

Reſol.
Judges.
1633. Q.
3, 4.

And all men that have or may have uſe for ſervants, as Knights, Clergy-men, Gentlemen, and Yeomen, aſwell as Tradeſmen, are bound to take them, or contribute towards the placing of them, although they do not keep ſervants, but be Sojourners or the like: if they uſe Husbandry, Clothing, Grazing, or the like, or however their caſe be, if by their calling and poſſeſſion they may

may have use of servants of like quality, they may be compelled to take them. And if a wealthy man shall live so privately, that he keep few or no servants, and liveth so that he needeth not a servant, yet he may be compelled either to take such an Apprentice himself, or contribute towards the placing of him with another: so others that cannot tell what to do with a servant, having no use of him, are to contribute towards the placing of him an Apprentice. And this contribution may be by a rate imposed and levied upon him; and yet all these must continue their ordinary Rates to the poor.

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